

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLARD L. SLOAN, EUGENE J.
WINNINGHAM, and JAMES L. KELLEY,
on behalf of themselves and a similarly
situated class,

Plaintiffs,

Case No. 09-cv-10918
Hon. Paul D. Borman
Magistrate Mona K. Majzoub

v.

Class Action

BORGWARNER, INC., BORGWARNER
FLEXIBLE BENEFITS PLANS and
BORGWARNER DIVERSIFIED
TRANSMISSION PRODUCTS, INC.,

Defendants.

EXHIBIT 11

TO

**PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT
AS TO LIABILITY**

GEORGE TURCZYNOWSKI
November 16, 2011

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

4 WILLIAM L. SLOAN, EUGENE J.)
5 WINNINGHAM, JAMES L. KELLEY,)
6 on behalf of themselves and a)
7 similarly situated class,)
8)
9 Plaintiffs,)
10)

11 -vs-) No. 09-cv-10918
12)

13 BORGWARNER, INC., BORGWARNER)
14 FLEXIBLE BENEFITS PLANS, and)
15 BORGWARNER DIVERSIFIED)
16 TRANSMISSION PRODUCTS, INC.,)
17)
18 Defendants.)
19)

20 Deposition of GEORGE TURCZYNOWSKY, taken before
21 DONNA L. POLICICCHIO, C.S.R., and Notary Public, pursuant
22 to the Federal Rules of Civil Procedure for the United
23 States District Courts pertaining to the taking of
24 depositions, at 18335 LaGrange Road, Tinley Park,
25 Illinois, commencing at 9:36 a.m., on the 16th day of
November, 2011.

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1 There were present at the taking of this deposition
2 the following counsel:

3 KLIMIST, McKNIGHT, SALE,
 McCLOW & CANZANO, P.C. by
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 dradtke@kmsmc.com

7
 on behalf of the Plaintiffs;

8
 McDERMOTT WILL & EMERY LLP by
9 MR. BOBBY R. BURCHFIELD and
 MR. JOSHUA D. ROGACZEWSKI
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12 jrogaczewski@mwe.com

13 on behalf of the Defendants.

14 ALSO PRESENT: MS. MARLENE D. FISCHER

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2	GEORGE TURCZYNOWSKI		
3	November 16,, 2011		
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1 GEORGE TURCZYNOWSKY,
2 called as a witness herein, having been first duly sworn,
3 was examined upon oral interrogatories and testified as
4 follows:

5 EXAMINATION

6 BY MR. RADTKE:

7 Q Good morning.

8 A Good morning.

9 Q Mr. Turczynowsky --

10 A Yes.

11 Q -- am I pronouncing it correctly?

12 A That's correct.

13 Q My name is David Radtke. We met briefly.
14 You're here pursuant to a subpoena. I appreciate
15 your patience and your willingness to come.

16 I'm going to ask you a series of questions.
17 If I ask you a question that's confusing or you don't
18 understand, please let me know and I'll try to
19 rephrase it in a way that we both understand. If you
20 would like to take a break, please feel free to let
21 me know. We can take a break whenever you would like
22 to, okay?

23 A Thank you.

24 Q I represent a group of retirees and surviving
25 spouses of retirees who were hourly employees who

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1 worked at the BorgWarner plant in Muncie, Indiana.
2 They retired between October 27, 1989, and early
3 2009, just so that you know the time frame that I'm
4 talking about and who I represent.

5 Could you state your current address,
6 please?

7 A 19810 Telluride, T-E-L-E-R-U-D-E, only one R,
8 Lane, Telluride Lane, Mokena, M-O-K-E-N-A,
9 Illinois 60448.

10 Q Are you currently employed?

11 A No.

12 Q Could you give me your educational
13 background, Mr. Turczynowsky?

14 A I graduated from the University of Illinois,
15 Chicago, in 1971 with a degree in electrical
16 engineering.

17 Q Do you have any other education beyond that?

18 A No.

19 Q You were employed for BorgWarner, is that
20 accurate?

21 A I was employed at BorgWarner?

22 Q Yes.

23 A Yes.

24 Q What was the exact name of the entity you
25 were employed by, if you remember?

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1 A What time frame are we talking about?

2 Q Let's start when you started.

3 A BorgWarner Corporation in 1972.

4 Q After you graduated from University of
5 Illinois, was BorgWarner the first place that you
6 worked?

7 A No.

8 Q Where did you work between your graduation
9 and your employment at BorgWarner?

10 A Factory Insurance Association, also known as
11 Industrial Risk Insurers.

12 Q When did you work there?

13 A Following graduation through September
14 of 1972.

15 Q How long did you work for BorgWarner
16 Corporation?

17 A As a legal entity?

18 Q Yeah.

19 MR. BURCHFIELD: Objection to form and
20 foundation. Go ahead, you may answer.

21 A From 1972 through 1987.

22 BY MR. RADTKE:

23 Q Between 1972 and 1987, what was your job
24 title or titles?

25 A Initially I was responsible in the Risk

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1 Management Department of BorgWarner for plant and
2 employee safety, property protection programs. In
3 1978, I was promoted to manager of group insurance in
4 the Employee Benefits Department. Subsequent to
5 that, I also assumed on or about 1985 responsibility
6 for pension plans. That carries you through 1987.

7 Q And your title was manager?

8 A Manager of group insurance and pensions.

9 Q What happened with respect to BorgWarner
10 Corporation in 1987?

11 A The company went through a leveraged buyout.

12 Q And did another entity or another -- was
13 there a name change? What was the result -- let me
14 just stop and rephrase.

15 What was the result of the leveraged buyout?

16 MR. BURCHFIELD: Object to form.

17 THE WITNESS: I'm sorry.

18 MR. BURCHFIELD: You may answer.

19 A The surviving companies became BorgWarner
20 Protective Services and BorgWarner Automotive.

21 BY MR. RADTKE:

22 Q Did you retain your employment?

23 A I did.

24 Q With which entity?

25 A Protective Services.

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1 Q What was your job with BorgWarner Protective
2 Services?

3 A Manager, group insurance and pensions.

4 Q What type of business was BorgWarner
5 Protective Services in?

6 A They were involved with alarm services and
7 security services, guard services.

8 Q Did BorgWarner Protective Services have any
9 relationship with the plant in Muncie, Indiana?

10 MR. BURCHFIELD: Object to form and foundation.
11 You may answer. Unless I specifically tell you not
12 to answer, you should answer the question. These are
13 objections for the record.

14 A Please repeat the question.

15 MR. RADTKE: Could you --

16 (From the record above, the reporter read
17 the following:

18 "Q Did BorgWarner Protective
19 Services have any relationship with the
20 plant in Muncie, Indiana?")

21 THE WITNESS: No.

22 BY MR. RADTKE:

23 Q How long did you work for BorgWarner
24 Protective Services?

25 A I believe it was through 1993.

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1 Q In 1993 did your employer change?

2 A Yes.

3 Q And who did you become employed by?

4 A BorgWarner Automotive.

5 Q What was your job title at BorgWarner

6 Automotive?

7 A Manager of employee benefits.

8 Q How long did you hold that position?

9 A Approximately three years. I beg your
10 pardon. Approximately five years.

11 Q Until approximately 1998?

12 A Approximately.

13 Q Did you move to another position within
14 BorgWarner Automotive?

15 A Yes.

16 Q What was that position?

17 A Director of group benefits and pensions.

18 Q How long did you hold that position?

19 A Approximately two years.

20 Q Did your employment change?

21 A Yes.

22 Q And what did your job title become?

23 A Director of employee benefits in about the
24 year 2000.

25 Q How long did you hold that position?

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1 A Through my retirement date in July of 2005.

2 Q Going back to the split after the leveraged
3 buyout between BorgWarner Protective Services and
4 BorgWarner Automotive, was the Muncie plant part of
5 BorgWarner Automotive?

6 A It was a subsidiary of Diversified
7 Transmission Products; that is to say, Diversified
8 Transmission Products was a subsidiary of BorgWarner
9 Automotive.

10 Q Do you know how long the Muncie plant was a
11 subsidiary of BorgWarner Automotive?

12 A I do not.

13 Q During your employment at BorgWarner
14 Corporation and then the subsequent employment that
15 you had through July of 2005, did you have any
16 relationship with benefits provided to employees and
17 retirees of the BorgWarner plant in Muncie, Indiana?

18 A Clarify what you mean by "benefits provided."

19 Q Health care benefits or pension benefits.

20 A Did I personally have any responsibility?

21 Q Yes.

22 A No.

23 Q Were you ever involved in collective
24 bargaining between BorgWarner DTP and the UAW for the
25 Muncie hourly employees?

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1 A Yes.

2 Q In what years were you involved in collective
3 bargaining?

4 A 1992, 1995, 1998, and 2000 approximately.

5 Q Did the bargaining occur approximately in the
6 year 2000?

7 A Yes.

8 Q During your employment with BorgWarner
9 Protective Services between 1987 and 1993, were you
10 involved in collective bargaining regarding the
11 Muncie plant and the UAW?

12 A I was not present at the bargaining sessions
13 between 1987 and 1989.

14 Q Did you have any responsibility with respect
15 to the benefits that were negotiated between the UAW
16 and BorgWarner between 1987 and 1989?

17 A Clarify "responsible."

18 Q Did you have any role with respect to health
19 care benefits or pension benefits?

20 MR. BURCHFIELD: Object to form.

21 A To the extent that benefits that were
22 negotiated were then distributed to the various and
23 sundry administrative bodies that were going to be
24 responsible for managing those programs,
25 administering those programs.

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1 BY MR. RADTKE:

2 Q You had responsibility with respect to
3 dispersing those contents?

4 A Yes, dispersing them, making the insurance
5 companies who are the administrators available, what
6 the benefit levels are going to be, making the
7 trustees aware of what the new benefits levels are
8 with respect to the pension programs.

9 Q And that continued even when you were
10 employed at BorgWarner Protective Services?

11 A That's correct.

12 Q And during your employment at BorgWarner
13 Protective Services, the Muncie plant was part of
14 BorgWarner Automotive?

15 A I believe so.

16 Q So you had a role that crossed between
17 BorgWarner Protective Services and BorgWarner
18 Automotive?

19 MR. BURCHFIELD: Objection to form and
20 foundation.

21 A A service bureau role, yes.

22 BY MR. RADTKE:

23 Q Could you explain what a service bureau role
24 means?

25 A We provided certain expertise relating to

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1 employee benefit matters for both Protective Services
2 as well as BorgWarner Automotive.

3 Q Did BorgWarner Automotive also have a
4 benefits department between 1987 and 1993?

5 A Where? Specifically where?

6 Q Did they in Muncie?

7 A They had a local manager of benefits in
8 Muncie.

9 Q And where were you employed physically? What
10 was your location when you worked for all of the
11 BorgWarner entities between 1972 and 2005?

12 A Chicago.

13 Q What was located in Chicago as it relates to
14 BorgWarner?

15 A Corporate headquarters.

16 Q What was corporate headquarters'
17 responsibility as it related to health care benefits
18 for the BorgWarner hourly employees at Muncie,
19 Indiana?

20 A I can't speak to that.

21 Q What role did you have with respect to the
22 hourly employees' health care benefits that worked in
23 Muncie, Indiana?

24 A As I previously stated, we had a
25 responsibility for making sure that whatever benefits

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1 were provided by Muncie, DTP Muncie, were going to be
2 property administered by the various and sundry
3 administrative organizations that were the
4 responsibility of corporate, my responsibility, to
5 provide for various units, including Muncie.

6 Q What other units did you provide services for
7 that were part of BorgWarner Automotive?

8 A All units that were part of BorgWarner
9 Protective as well as BorgWarner Automotive during
10 that time period of '87 through about 1993.

11 Q BorgWarner Automotive had other plants and
12 facilities other than Muncie, Indiana, during that
13 time frame of '87 to '93?

14 A Yes.

15 Q Where else did they have plants and
16 facilities?

17 MR. BURCHFIELD: Objection. Foundation.

18 A Michigan, New York, Illinois. There were
19 numerous locations. I just do not recall them all at
20 this point.

21 BY MR. RADTKE:

22 Q In 1993 when you became employed at
23 BorgWarner Automotive, did you leave your employment
24 at BorgWarner Protective Services?

25 A Yes.

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1 Q Did BorgWarner Protective Services continue
2 to operate after you left?

3 A Yes.

4 Q Did you continue to have responsibilities
5 with respect to the administration of health care
6 benefits for BorgWarner Protective Services
7 employees?

8 A No.

9 Q Did you have any responsibility for
10 employees' benefits -- I'm going to withdraw that
11 question.

12 When you went to BorgWarner in 1993,
13 BorgWarner Automotive, to clarify, what was your --
14 what were your job duties as the manager of employee
15 benefits?

16 A Essentially the same as they were in the
17 period between '87 and '93.

18 Q And what were they?

19 A To provide strategic planning, guidance,
20 administrative protocols with respect to -- and
21 analysis -- financial analysis of the various and
22 sundry benefit programs for the company.

23 Q Including those programs that were in place
24 in the BorgWarner facility in Muncie, Indiana?

25 A Yes.

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1 Q You testified earlier that you were involved
2 in the contract negotiations with the UAW and its
3 Local 287 in Muncie, Indiana, in 1992, 1995, 1998,
4 and approximately 2000, correct?

5 A Yes.

6 Q Were you actually physically at negotiations
7 during each one of those years?

8 A On an as-needed basis. I was not there at
9 all times.

10 Q When were you present during negotiations?
11 Was there a certain subject matter that you were
12 present for negotiations?

13 A Yes.

14 Q What subject matter or matters were they?

15 A Employee benefit related matters.

16 Q Does that include health insurance?

17 A Yes.

18 Q Pension?

19 A Yes.

20 Q Life insurance?

21 A Yes.

22 Q Were you involved in negotiating the health
23 insurance agreement between the UAW and BorgWarner at
24 the Muncie plant during the years that you mentioned?

25 A The direct responsibility for negotiations

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1 always rested with the HR -- senior HR representative
2 at the location during those time periods. I was
3 there to provide consultative advice and guidance
4 with respect to those matters.

5 Q So you were involved in negotiations of those
6 matters --

7 MR. BURCHFIELD: Objection to form.

8 BY MR. RADTKE:

9 Q -- by being present?

10 MR. BURCHFIELD: Objection to form.

11 A I was present.

12 BY MR. RADTKE:

13 Q Did BorgWarner DTP management at the Muncie
14 plant have the authority to make agreements without
15 approval of BorgWarner Automotive?

16 MR. BURCHFIELD: Object to foundation.

17 A I believe that changes, programs probably
18 were a collaborative effort with respect to local
19 management, subsidiary management, and whatever the
20 protocols called for with regard to the chain of
21 command within the organization.

22 BY MR. RADTKE:

23 Q When you say changes and I think you said
24 programs, what are you referring to?

25 A Any benefits that would have been negotiated

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1 or tentatively agreed to, any programs relating to
2 employee benefit matters.

3 Q If the employee benefit matters were
4 negotiated in Muncie by company management officials
5 that were based in Muncie, would they be sent to
6 BorgWarner headquarters for review?

7 MR. BURCHFIELD: Object to form and foundation.

8 A I could only state what I said earlier, and
9 that is that there was a collaborative effort, I'm
10 sure, with regard to local management, the subsidiary
11 management, and presumably at some point corporate
12 management with regard to the programs that were
13 tentatively agreed to.

14 BY MR. RADTKE:

15 Q Did BorgWarner Automotive have a role in
16 deciding who bargained on behalf of BorgWarner DTP in
17 their negotiations with the UAW?

18 A Not to my knowledge.

19 Q Other than yourself as an employee of
20 BorgWarner Automotive, were there any other employees
21 of BorgWarner Automotive that were participants in
22 the negotiations with the UAW over the Muncie plant?

23 MR. BURCHFIELD: Object to form.

24 A Clarify for me, please, the time period that
25 you're talking about.

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1 BY MR. RADTKE:

2 Q Let's say from 1992 through 2000.

3 A Not to my knowledge.

4 Q What about prior to 1992?

5 MR. BURCHFIELD: Object to foundation.

6 A Again, not to my knowledge.

7 BY MR. RADTKE:

8 Q Did your responsibilities change in 1998 when
9 you became the director of group benefits and
10 pensions as it relates to the BorgWarner facility in
11 Muncie, Indiana?

12 A The duties remained essentially the same.
13 They were somewhat broadened to include other
14 elements of the employee benefit programs.

15 Q What other elements were added?

16 A Such as a retirement savings plan, a/k/a
17 401(k) plan.

18 Q Did your duties change in 1998 when you
19 became the director of group benefits and pensions at
20 BorgWarner overall?

21 A No.

22 Q What about in 2000 when you became the
23 director of employee benefits, did your role or
24 responsibilities change during that period of time?

25 A Yes, to include the broader benefit that I

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1 mentioned, the 401(k) programs.

2 Q Between 1993 and 1998, who did you report to?

3 A The vice-president of human resources,
4 Geraldine Kinsella.

5 Q Who did Ms. Kinsella work for?

6 A BorgWarner Automotive.

7 Q Between 1998 and 2000, did you continue to
8 report to Ms. Kinsella?

9 A Yes.

10 Q And what about between 2000 and 2005, who did
11 you report to?

12 A I continued to report to Ms. Kinsella up
13 until about 2002 when she retired.

14 Q Then who did you report to?

15 A A new vice-president of human resources,
16 Ms. Kimberly Dickens, through about late 2004.

17 Q Then who did you report to?

18 A To the new vice-president of human resources,
19 Ms. Angela Daversa, until my retirement in July
20 of 2005.

21 Q With respect to Ms. Kinsella and Ms. Daversa,
22 they also worked for BorgWarner Automotive, is that
23 accurate?

24 A Yes.

25 Q Did you ever work -- or I'm sorry -- report

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1 to anyone at BorgWarner Diversified Transmission
2 Products?

3 A Report?

4 Q Yes.

5 A No.

6 Q Between 1987 and 1993, who did you report to?

7 A 1987 and --

8 Q 1993. I believe you testified that was the
9 time you were employed by BorgWarner Protective
10 Services.

11 A Mr. Andrew Ruff, the director of risk
12 management and employee benefits.

13 Q And who did he work for, Mr. Ruff?

14 A He reported to the vice-president of human
15 resources, Mr. John O'Brien.

16 Q What was the name of the employer that
17 Mr. Ruff worked for?

18 MR. BURCHFIELD: Object to foundation.

19 A I believe it was Protective Services.

20 BY MR. RADTKE:

21 Q What about Mr. O'Brien, who was he employed
22 by?

23 A I can't say with certainty.

24 Q Would it have been either BorgWarner
25 Protective Services or BorgWarner Automotive?

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1 A Yes.

2 Q When you were employed by BorgWarner
3 Automotive, what was your role with respect to
4 third-party administrators and health care benefits
5 that were provided to the Muncie employees?

6 A We had the responsibility to secure those
7 administrators in the most cost-effective way
8 possible to provide those services to the Muncie
9 unit.

10 Q So BorgWarner Automotive would decide which
11 third-party administrator would administer the health
12 care benefits?

13 A Generally speaking, that was the case where
14 practicable.

15 Q Were there times when it wasn't practicable?

16 A That's correct.

17 Q In what instances was it not practicable?

18 A Where there were no particular programs in
19 place or administrators that lent themselves to the
20 overall umbrella programs that we had or
21 administrators that we had, so then we would on rare
22 occasions do something on an as-needed basis or
23 interim basis locally.

24 Q So on those rare occasions that you just
25 referenced the BorgWarner local management would

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1 engage a third-party administrator?

2 A In Muncie?

3 Q Yes.

4 A No.

5 Q What would happen in those rare instances?

6 A Not in Muncie.

7 Q What would happen? So you were referring to
8 more globally?

9 A More globally.

10 Q In Muncie, BorgWarner Automotive was always
11 able to secure a third-party administrator for the
12 benefits that were negotiated?

13 A BorgWarner Muncie with assistance from my
14 area.

15 Q I'll give you an example. CIGNA at some
16 point in time was a third-party administrator for the
17 health care benefits provided to the hourly
18 employees?

19 A Yes.

20 Q Who decided to use CIGNA as the third-party
21 administrator?

22 A That became an issue under my venue, my
23 purview.

24 Q You decided?

25 A Yes, yes. I mean, based on analysis and

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1 whatnot, yes.

2 Q And at some point in time CIGNA was not used
3 as the health care third-party administrator for the
4 Muncie employees, is that accurate?

5 A I don't know that to be the case.

6 Q If there was a change in administrators with
7 respect to health care benefits for the Muncie
8 employees, would that have also been your
9 responsibility?

10 A Yes.

11 Q One of your responsibilities was related to
12 the pension that was negotiated for the hourly
13 employees at the Muncie plant, correct?

14 A For the administration of the programs, yes.

15 Q What did you do with -- what was your job
16 with respect to administrating that program?

17 A Primarily to make sure that that information
18 was disseminated to the actuaries who would then
19 perform the necessary evaluations of the programs and
20 to identify the implications of those programs and
21 then ultimately to the trustee to make sure that the
22 benefit levels were going to be consistently paid out
23 to prospective retirees when they made application
24 for retirement through the local people in Muncie.

25 Q Who were the trustees of the pension plan?

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1 A During the time frame of --

2 Q Between 1993 and 2005.

3 A Northern Trust.

4 Q Did they have -- were they the trustees for
5 more than just the pension plan that was negotiated
6 at the BorgWarner facility for hourly employees?

7 A Yes.

8 Q Who else were they the trustees for?

9 MR. BURCHFIELD: Objection. Foundation and form.

10 A Other hourly pension plans that were in
11 existence in BorgWarner at that time.

12 BY MR. RADTKE:

13 Q Was there a single hourly pension plan?

14 A No.

15 Q What other -- explain to me the makeup of the
16 pension plan during the time period.

17 A Which makeup?

18 Q Well, was there a single plan?

19 A No.

20 Q Was there a separate plan for each facility?

21 A Yes.

22 Q And Northern Trust was the trustee for all of
23 these separate hourly pension plans at the different
24 facilities of BorgWarner Automotive?

25 A Yes, the investment trustee. That's what I

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1 mean by trust.

2 Q Do you know a Regis Trenda?

3 A I do.

4 Q Did you ever work with Mr. Trenda?

5 A I did.

6 Q Where did you work with Mr. Trenda?

7 A He was headquartered in the same offices that
8 I was in Chicago.

9 Q What was his job?

10 A He was a compliance officer with respect to
11 legislative matters relating to employee benefit
12 plans.

13 Q Was he a lawyer?

14 A He was an attorney.

15 Q Did he work in the BorgWarner Automotive
16 Legal Department?

17 A Yes, he did.

18 Q Do you know how long Mr. Trenda worked for
19 BorgWarner Automotive?

20 A Beginning in 19 -- I'm going to say around
21 1989 or 1990, somewhat earlier than my transfer to
22 BorgWarner Automotive in 1993.

23 Q And how long did he continue to work for
24 BorgWarner Automotive?

25 A It was at least through 2005. I can't speak

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1 to exactly what happened after I retired in 2005 and
2 how long he was there.

3 Q Do you know whether Mr. Trendera was ever
4 present during contract negotiations for the Muncie
5 employees?

6 A At the negotiating table?

7 Q Yes.

8 A Not to my knowledge.

9 Q Did he have any responsibility with respect
10 to those contract negotiations away from the table?

11 A He performed a review function to make sure
12 that the various and sundry documents and programs
13 were in compliance with ERISA and various other
14 legislative issues such as HIPAA, the other
15 legislation that was passed, and again, I do not
16 recall them all off the top of my head but, again, to
17 make sure that we were in compliance.

18 Q When a collective bargaining agreement was
19 reached between the UAW and BorgWarner at the Muncie
20 facility, who was responsible for drafting the
21 contract?

22 A It was a joint responsibility. It was -- the
23 input was provided locally into either an existing
24 document or, if necessary, a new document, which then
25 was reviewed by the appropriate officials within the

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1 UAW organization as well as here in Chicago.

2 Q So once a tentative agreement was reached in
3 Muncie, the company officials that were involved in
4 negotiations drafted an agreement that reflected the
5 agreements reached at the bargaining table, is that
6 correct?

7 MR. BURCHFIELD: Object to form.

8 A The local management would start that
9 process, yes.

10 BY MR. RADTKE:

11 Q And then their work would be reviewed by
12 BorgWarner corporate headquarters?

13 A It would be reviewed by the appropriate
14 people that had some level of expertise or
15 responsibility with regard to the contents of that
16 document.

17 Q I'm sorry. I didn't mean to cut you off.

18 One of those was Mr. Trenda. You mentioned
19 that, right?

20 A Yes.

21 Q And one of them was you, is that correct?

22 A Yes.

23 Q And then at some point that document would be
24 provided to the UAW, correct?

25 A It could have been a simultaneous matter that

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1 it was sent to us for review as well as to the UAW
2 folks in Michigan to review or whatever local process
3 that they had within the organization to take care of
4 those matters.

5 Q Okay. I'm going to talk a little bit about
6 what was actually negotiated in Muncie, okay?

7 A Uh-huh.

8 Q Is it your recollection there was a health
9 insurance agreement that was negotiated as a document
10 in Muncie?

11 A Yes.

12 Q And there was a retirement income program
13 that was negotiated for the employees of Muncie?

14 A Yes.

15 Q And then there was a collective bargaining
16 agreement that related to working conditions and
17 wages for the employees at Muncie, correct?

18 A Yes. Now, please, again, before we go any
19 further, what time period are we talking about?

20 Q During your time that --

21 A At any time between '93 and '98?

22 Q Right.

23 A Yes.

24 Q And 2000, correct?

25 A Yes.

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1 Q Not all of them may have been negotiated at
2 the same time.

3 A Correct.

4 Q I'm talking more globally. There were
5 separate documents that were generated as a result of
6 contract negotiations?

7 A Not always.

8 Q We'll talk about that. But there were -- at
9 some period of time there was a retirement income
10 document, correct?

11 A Yes.

12 Q There was a separate collective bargaining
13 agreement?

14 A Yes.

15 Q There was a separate health insurance
16 agreement?

17 A Yes.

18 Q I believe there was also a separate sub-plan
19 agreement?

20 A Yes.

21 Q Before we mark this, I want to see if you can
22 identify it. If you can, then I'll -- I'll read the
23 document number into the record, and I apologize for
24 the poor quality of it. It's LOC 000448.

25 Mr. Turczynowsky, could you review this

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1 document?

2 A Please tell me what the date on this document
3 is.

4 Q I believe it is March 14, 1980.

5 A I have never seen this document to the best
6 of my knowledge.

7 Q Then I'm going to take it back.

8 In 1980 you were the manager of group
9 insurance and employee benefits for BorgWarner
10 Corporation, correct?

11 A No.

12 Q What was your title?

13 A In 1980?

14 Q Yes.

15 A Manager of group insurance.

16 Q Did you have any role in collective
17 bargaining as it related to the Muncie facility at
18 that time?

19 A No.

20 Q When was the first time you had any role with
21 respect to collective bargaining at the Muncie
22 facility?

23 A Direct contact at the table?

24 Q You mentioned -- you stated there was a lot
25 of contact at the table time periods. I'm asking you

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1 outside of direct contact.

2 A About 1985.

3 Q There were contract negotiations in 1985 and
4 '86?

5 A I believe in 1986.

6 Q And with respect to 1986, what was your role
7 in the 1986 negotiations?

8 A To provide some assistance and guidance to
9 local management with respect to the benefit issues
10 and programs.

11 Q Including health care benefits?

12 A Including health care benefits.

13 Q Did you play a similar role in 1989?

14 A Similar, but limited.

15 Q What was your role in 1989?

16 A To provide some general information to local
17 management with respect to health care and employee
18 benefit matters.

19 Q The first time you ever were at the
20 bargaining table was 1992 with respect to the Muncie
21 group?

22 A Yes.

23 Q Had you ever been involved in collective
24 bargaining negotiations prior to 1992 in any other
25 setting?

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1 A Yes.

2 Q Where?

3 A Michigan.

4 Q At what facility were you involved in
5 negotiations?

6 A Sterling heights facility.

7 Q What negotiations were you involved in with
8 respect to the Sterling Heights facility, what years?

9 A I can't say with certainty.

10 Q In the 1980s?

11 A 1980s, mid to late 1980s.

12 Q Was that your only other prior experience in
13 contract negotiations with the union?

14 A No.

15 Q What other negotiations were you involved in?

16 A Rockford, Illinois.

17 Q What entity was located in Rockford,
18 Illinois, that you were involved in contract
19 negotiations?

20 A At that time it was known as Rockford Clutch.

21 Q It was a subsidiary of BorgWarner Automotive
22 or BorgWarner, Inc.?

23 MR. BURCHFIELD: Object to form, foundation.

24 A I can't speak to the exact legal entity of
25 that particular group.

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1 BY MR. RADTKE:

2 Q It was related in some way to BorgWarner?

3 A In some way.

4 Q What years were you involved in contract
5 negotiations in Rockford, Illinois?

6 A Mid to late 1980s.

7 Q Any other contract negotiations prior to 1992
8 that you were involved in?

9 A Chicago, Illinois.

10 Q What facility were you involved in contract
11 negotiations in Chicago, Illinois?

12 A Borg & Beck clutch facility.

13 Q Do you recall when you were involved in
14 contract negotiations there?

15 A Again, mid to late '80s. I don't have
16 specific dates that I can recall.

17 Q Any other contract negotiations?

18 A There may be others, but I just don't recall
19 them off the top of my head.

20 (Exhibit 49 marked as requested.)

21 BY MR. RADTKE:

22 Q Mr. Turczynowsky, you've been handed a
23 document that's been marked as Exhibit 49.

24 Have you ever seen this document before?

25 A What is the date of this document?

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1 Q There are a number of dates in this document.
2 Parts of it are from 1980. Parts of it are from
3 prior to that time.

4 A I cannot say for certainty that I've ever
5 seen this document one way or another.

6 Q Have you ever seen -- what was Warner Gear?
7 Was it related in any way to BorgWarner Corporation?

8 A To the best of my recollection, Warner Gear
9 was the prior entity for DTP Muncie.

10 Q Do you recall when Warner Gear became DTP
11 Muncie?

12 A No.

13 (Exhibit 50 marked as requested.)

14 BY MR. RADTKE:

15 Q You've been handed a document that's been
16 marked as Exhibit 50. It's an April 1, 1983, Hourly
17 Group Insurance Program covering employees in the
18 bargaining unit represented by the UAW and its
19 Local 287.

20 Have you ever seen this document?

21 A I may have.

22 Q Where would you have seen this document?

23 A In the files that may have been maintained or
24 were maintained either at the plant or in Chicago in
25 the administrative files.

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1 Q Did you ever have any role with respect to
2 the benefits that are described in this document?

3 MR. BURCHFIELD: Object to form.

4 A To the best of my knowledge, no.

5 (Exhibit 51 marked as requested.)

6 BY MR. RADTKE:

7 Q Mr. Turczynowsky, you've been handed what's
8 been marked as Exhibit 51. It's a document that says
9 effective January 1, 1985. It says Retired Group
10 Insurance Program.

11 Have you ever seen this document before?

12 A It's possible, but I can't say with
13 certainty.

14 Q Do you know who this Retired Group Insurance
15 Program was applicable to?

16 A No.

17 Q You testified that BorgWarner Automotive came
18 into existence in about 1987, is that correct?

19 A Approximately.

20 Q You'll notice that the title of this document
21 is BorgWarner Automotive.

22 A Okay.

23 Q So is it your recollection that on January 1,
24 1985, BorgWarner Automotive was not in existence?

25 MR. BURCHFIELD: Object to form.

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1 A I can't speak to that. This was not my area
2 of expertise, and so therefore I can't make an
3 intelligent response to that question. Sorry.

4 BY MR. RADTKE:

5 Q That's okay.

6 I'm going to ask you to turn to Page 26 of
7 this document. If you look at the bottom, it says
8 the plan identification number.

9 A Yes.

10 Q It says Plan Number 581.

11 Do you have any familiarity with that plan
12 number?

13 A Not off the top of my head.

14 Q Were there different plan numbers for
15 insurance programs that were provided to employees
16 and retirees at the Muncie plant?

17 A I think there were different plan numbers.

18 Q And were there some plan numbers that covered
19 salaried employees and retirees and some plan numbers
20 that covered hourly plan members and retirees?

21 A I think that's an accurate statement.

22 Q So at this point you don't know whether Plan
23 Number 581 was an hourly plan or a salary plan?

24 A I do not.

25 Q On the last page -- I think it's the very

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1 next page. This page right here, sir. One more.

2 MR. BURCHFIELD: The one headed Accident and
3 Health Insurance?

4 MR. RADTKE: Yes.

5 BY MR. RADTKE:

6 Q On the bottom it says PF 26003 and then in
7 parenthesis 3.1.

8 Do you recognize that as -- that numbering?

9 A No.

10 MR. RADTKE: Thank you.

11 (Exhibit 52 marked as requested.)

12 BY MR. RADTKE:

13 Q Was there something you wanted to point out
14 there, Mr. Turczynowsky?

15 A In the interest of accuracy, I said I had no
16 idea what a Plan 581 was.

17 Q Yes.

18 A However, on Page 29 at the top of the page,
19 Certificate of Insurance, that particular policy
20 number, if memory serves me, suggests this is a
21 salary plan.

22 Q Thank you.

23 I think you've been handed a document that's
24 been marked as Exhibit 52.

25 A Yes, I have.

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1 Q It's a position statement. There is some
2 handwriting that suggests that it's from 1986, if you
3 look at the bottom of the first page, and there is
4 references to 1986 and 1987.

5 Have you ever seen this document before?

6 A I cannot say with certainty one way or
7 another.

8 Q Do you know -- have you ever seen a similar
9 document that was entitled Position Statement?

10 A I can't say for certain.

11 Q Were you ever involved in drafting position
12 statements for BorgWarner?

13 A Similar to this?

14 Q Similar to this.

15 A No.

16 Q Do you know anyone who was involved in
17 drafting position statements that were similar to
18 this?

19 A No.

20 MR. RADTKE: Thank you.

21 (Exhibit 53 marked as requested.)

22 BY MR. RADTKE:

23 Q Mr. Turczynowsky, you've been handed a
24 document that's been marked as Exhibit 53. It's an
25 August 7, 1986, letter from Dean Boyle to Charles

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1 Smith.

2 Have you ever seen this document before?

3 A I'm not sure.

4 Q You testified earlier that you were involved
5 in the 1986 negotiations away from the table,
6 correct?

7 A That is correct.

8 Q And in 1986 there were contract negotiations
9 between the UAW and BorgWarner at the Muncie
10 facility, correct?

11 A I think so.

12 Q And was there a threat of a strike in 1986,
13 if you remember?

14 A I do not recall.

15 Q Who was Dean Boyle?

16 A He was the human resources -- senior human
17 resources manager at the Muncie facility at that
18 time.

19 Q He was a participant in bargaining with the
20 UAW in 1986?

21 A Yes, I believe that's correct.

22 Q Were you consulted in 1986 about whether
23 retiree health care coverage would be provided if
24 there was a strike?

25 A No.

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1 Q I'm going to hand you what's been marked
2 previously as Exhibit 5, which is an October 27,
3 1989, BorgWarner Automotive and UAW Local 287
4 Tentative Agreement.

5 Have you ever seen this document before,
6 Mr. Turczynowsky?

7 A I believe I have. This looks familiar. May
8 I ask you what's the date of this, aside from the
9 10/26/89, when this was published, do you know?

10 Q I don't know. I can only tell you that
11 that's the date on the top of it.

12 A Okay. Fair enough.

13 Q Do you recall whether you would have seen
14 this document around the time of October 1989?

15 A I can't say for certain.

16 Q How would you have seen this document?

17 A It would have been distributed to us for
18 administrative purposes to make sure that all the
19 various and sundry changes were properly incorporated
20 into documents, to advise the administrators of the
21 programs, you know, what the levels were going to be
22 and so on and so forth. It was an informational
23 document.

24 Q So this would be the sort of document that
25 you would receive so that you could inform the

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1 third-party administrator that brand name drugs
2 deductible went up to seven dollars, correct?

3 A Yes.

4 Q And I'm looking at the second page, Item
5 Number 10. And that, for example, Number 11, that
6 pre-strike coverage continued in effect plus a
7 \$400,000 major medical lifetime maximum and calendar
8 year deductible, correct?

9 A Yes.

10 Q So you would have communicated that to
11 whoever the third-party administrator was that
12 according to what was reached -- the contract reached
13 at the table that the major medical maximum increased
14 as a result of negotiations?

15 A Yes.

16 Q On Item Number 20 there is a reference to
17 managed care.

18 Do you recall that the parties negotiated a
19 managed care program for active employees and
20 pre-Medicare retirees in 1989?

21 MR. BURCHFIELD: Objection to form, foundation.

22 A I believe that's correct.

23 BY MR. RADTKE:

24 Q And could you describe what a managed care
25 program was as it relates to this group of employees?

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1 A Generally speaking, it would require
2 employees and pre-Medicare retirees to seek
3 authorization or concurrence for the medical
4 necessity related to a planned nonemergency inpatient
5 confinement, a surgical procedure, the length of stay
6 authorization based on the admission protocols,
7 generally a program that would provide for some
8 intervention by a third party to review what is
9 planned by the attending physicians with respect to
10 an individual's care.

11 Q Was that a different program that was in
12 place for the Muncie facility than what was in place
13 prior to 1989?

14 A I believe this was a new procedure.

15 Q And do you know what the procedure was prior
16 to 1989?

17 A I believe it contained none of these
18 provisions, that it was based on the employee and the
19 attending physicians that would work directly without
20 any kind of intervention and no ability on anyone's
21 part -- or requirement on anyone's part, I should
22 say, to review what those procedures might be.

23 Q Okay. If you go back to Number 11 where it
24 says health care, hospital, medical, surgical, major
25 medical, current retirees, and then it says

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1 pre-strike coverage, do you know whether the current
2 retirees as of October 27, 1989, were put into the
3 managed care program or not?

4 MR. BURCHFIELD: Could you read that question
5 back, please?

6 (From the record above, the reporter read
7 the following:

8 "Q Okay. If you go back to Number
9 11 where it says health care, hospital,
10 medical, surgical, major medical, current
11 retirees, and then it says pre-strike
12 coverage, do you know whether the current
13 retirees as of October 27, 1989, were put
14 into the managed care program or not?")

15 MR. BURCHFIELD: Object to form and foundation.

16 A I don't think so.

17 BY MR. RADTKE:

18 Q Do you recall in 1989 that there was a strike
19 at the Muncie facility?

20 A I do.

21 Q And then that strike concluded with this
22 tentative agreement that I showed you and has been
23 marked previously as Exhibit 5?

24 A I believe that to be correct.

25 Q Is it your understanding that the retiree

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1 health care benefits provided to retirees as of
2 October 27, 1989, stayed the same except for the
3 increase of the major medical lifetime maximum and
4 that the deductible now went on a calendar year?

5 MR. BURCHFIELD: Object to form and foundation.

6 A I don't recall that level of detail, but I
7 have to assume that this document is correct.

8 BY MR. RADTKE:

9 Q In Item Number 13 it talks about health care
10 benefits for future retirees.

11 Do you see that?

12 A I do.

13 Q And then it refers to Attachment Number 3,
14 which is attached actually to this document.

15 A I see it.

16 Q Is it your recollection that hourly employees
17 who retired effective December 1, 1989, through March
18 of -- I'm sorry -- March of 1995 continued to have
19 the health care benefits that are set forth in
20 Attachment Number 3 up until the time of your
21 retirement in 2005?

22 A I can't say that.

23 Q You don't recall?

24 A No.

25 Q In looking at this tentative settlement that

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1 is Exhibit 5, are you aware of any changes that were
2 negotiated by the parties as it relates to the
3 eligibility or duration of retiree health care
4 benefits?

5 A In this 1989 agreement?

6 Q Yes.

7 MR. BURCHFIELD: Object to form and foundation.

8 A My only recollection related to retiree
9 benefits was a provision in the agreements that
10 stated that the company reserved the right to change,
11 amend, suspend, terminate programs at any time
12 subject to whatever collective bargaining provisions
13 there were in place.

14 BY MR. RADTKE:

15 Q And what agreement was that statement that
16 you just referenced?

17 A There, I believe, were health insurance
18 agreements that dated back to 1989, 1992 where that
19 particular language -- again, if my memory is
20 correct -- was included in those documents.

21 Q Do you know whether that type of language is
22 included in agreements prior to 1989?

23 A I do not.

24 Q You do not know?

25 A I do not know. I do not recall.

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1 Q Do you know whether the language that you're
2 referencing was negotiated at the table with the
3 union?

4 MR. BURCHFIELD: Object to form and foundation.

5 A I have to assume that it was, but I cannot be
6 certain.

7 BY MR. RADTKE:

8 Q You weren't there in the 1989 negotiations?

9 A That is correct.

10 Q If the parties negotiated an item at the
11 table, would you agree that BorgWarner's --
12 BorgWarner Automotive, meaning its corporate office,
13 did not have the right or authority to change the
14 tentative agreements that were reached by the parties
15 at the table?

16 MR. BURCHFIELD: I'm sorry. Could you read that
17 back?

18 (From the record above, the reporter read
19 the following:

20 "Q If the parties negotiated an
21 item at the table, would you agree that
22 BorgWarner's -- BorgWarner Automotive,
23 meaning its corporate office, did not have
24 the right or authority to change the
25 tentative agreements that were reached by

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1 the parties at the table?")

2 MR. BURCHFIELD: Object. Foundation. I think
3 that calls for a legal conclusion.

4 A I can't say one way or another.

5 BY MR. RADTKE:

6 Q Well, if the parties reached an agreement,
7 for example, that prescription drug deductibles will
8 be seven dollars at the table in BorgWarner in
9 Muncie, if that item came to you in Chicago, could
10 you say, no, we're going to make it ten dollars?

11 A I couldn't do that. I didn't have the
12 authority to do anything like that.

13 Q Did anyone at BorgWarner corporate have the
14 authority to override what tentative agreements were
15 reached at the bargaining table?

16 A I don't know.

17 (Exhibit 54 marked as requested.)

18 BY MR. RADTKE:

19 Q Mr. Turczynowsky, have you ever seen the
20 document that's been marked as Exhibit 54, which is a
21 document dated December 8, 1989?

22 A I believe so.

23 Q Your name is there.

24 A Yes.

25 Q Do you know who Mr. Burghgraef was?

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1 A Yes. He was one of my colleagues. He
2 reported to me.

3 Q He worked in headquarters?

4 A He did.

5 Q What was this document?

6 A This is, in fact, the document that I
7 referred to earlier, which gave direct and explicit
8 instructions to our third-party administrators as to
9 the exact nature of the programs that they, the
10 administrators, had to include in their systems for
11 proper administration and adjudication of prospective
12 claims.

13 MR. RADTKE: Do you mind if we take a few minutes
14 here?

15 MR. BURCHFIELD: Absolutely. Let's take a break.

16 (Recess was taken.)

17 BY MR. RADTKE:

18 Q Mr. Turczynowsky, what's a summary plan
19 description?

20 A Typically it was a booklet or a pamphlet that
21 was produced to summarize the level of benefits for
22 employees, retirees.

23 Q In your experience was that a document that
24 was bargained with the union?

25 MR. BURCHFIELD: Object to form and foundation.

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1 A It typically reflected what the union had
2 agreed to in collective bargaining.

3 BY MR. RADTKE:

4 Q But it was different than a collective
5 bargaining agreement?

6 A A summary plan description was not a legal
7 document per se. It was a summary only and expressed
8 usually in layman's terms that they could understand
9 without all of the legalese that was typically in a
10 bargaining or a health insurance agreement.

11 Q In your experience could a summary plan
12 description take away something that was bargained in
13 a collective bargaining agreement?

14 MR. BURCHFIELD: Object. Foundation. It calls
15 for a legal conclusion.

16 A To the best of my knowledge, no.

17 BY MR. RADTKE:

18 Q I'm going to hand you a document that's
19 previously been marked as Exhibit 7. It's the
20 October 27, 1989, health insurance booklet.

21 Have you ever seen this document before?

22 A Yes.

23 Q What is this document?

24 A It is the comprehensive document that
25 reflects all of the provisions of the benefit

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1 programs as parties -- both parties agreed that was
2 negotiated. It includes the operation of the plan,
3 terms and provisions, as well as the level of
4 benefits.

5 Q I'm sorry. Go ahead.

6 A Just one other point, which is important. I
7 notice in the back here it says summary description.
8 It then provides for the legal requirement
9 information related to the operation of the plant.

10 MR. BURCHFIELD: He's on the page with the last
11 three Bates numbers 251.

12 MR. RADTKE: Okay.

13 THE WITNESS: And these are legally required
14 provisions that have to be included for the benefit
15 of the employees so that they will understand what
16 their rights and entitlements are across the whole
17 spectrum of not only plant operation but also the
18 process by which they can appeal claims and what
19 their entitlements are under ERISA.

20 BY MR. RADTKE:

21 Q This document is produced -- I'm sorry. Let
22 me re-ask that question.

23 You've been referring to the portion of
24 Exhibit 7 that begins on Page 120 where it says
25 summary description information, plan administration,

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1 correct?

2 A Page 120, that is correct.

3 Q This is a document -- Page 120, 121,
4 et cetera, through the end of the summary description
5 information, this was a document that was produced
6 and written by BorgWarner, correct?

7 A This was a document that was produced by DTP
8 Muncie and reviewed by BorgWarner.

9 Q Okay. And you do not -- I think you
10 testified you're not sure whether this was negotiated
11 with the union at the table?

12 A I'm sorry. What was?

13 Q Whether this portion, which is the summary
14 description information, do you know whether it was
15 negotiated with the union?

16 A I'm not sure I understand your question. It
17 has to reflect what all parties have agreed to,
18 number one; and number two, it has to also reflect,
19 this section beginning 120, what the legal
20 requirements are relative to plan operation such as
21 who the administrator of the plan is, who they can
22 contact with respect to appealing a claim; if there
23 is a dispute, how that dispute is to be resolved.
24 These are legal portions that are required to be
25 included in every document that is made available to

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1 employees.

2 Q You referenced reservation of rights type
3 language previously before I showed you this
4 document.

5 Do you recall that?

6 A I do.

7 Q Is that language in this health insurance
8 agreement that I've handed you that's been marked as
9 Exhibit 7?

10 A Page 121.

11 Q What are you referring to on Page 121?

12 A Future of the plan.

13 Q I believe you referred to the first paragraph
14 as to the reservation of right to modify, amend,
15 suspend, or terminate?

16 A Yes.

17 Q Then in the second paragraph it says that --
18 it references the collectively bargained health
19 insurance agreement, correct, where it says,
20 Additional information regarding termination of
21 insurance policies and individual insurance coverage
22 is provided in the health insurance agreement.

23 A Are you talking about the second paragraph
24 that begins with "An individual's insurance coverage
25 terminates" --

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1 Q Correct.

2 A Yes.

3 Q So it also says -- above that it says the
4 plan is maintained pursuant to a collective
5 bargaining agreement, correct?

6 A I see that.

7 Q So according to the summary plan description,
8 insurance coverage -- additional insurance
9 information regarding termination of insurance
10 policies and insurance coverage is provided in the
11 health insurance agreement. So the individual who
12 received this should look to the health insurance
13 agreement to determine whether they were eligible for
14 coverage and when that coverage would terminate,
15 correct?

16 MR. BURCHFIELD: Object to form and foundation.

17 A That's what the document says.

18 BY MR. RADTKE:

19 Q It looks like this document was -- the final
20 draft was dated November 15, 1991, and then it was
21 signed in 1992. Look at Page 16.

22 A I see it.

23 Q You did not sign this document, correct?

24 A I did not.

25 Q Do you know who this document was prepared

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1 by, the health insurance booklet?

2 A It would have been prepared by the DTP
3 management people -- that is a draft -- then
4 distributed to the union for their review, submitted
5 to us for our review, and we would then make changes
6 or incorporate language or suggestions and the union
7 would do the same, and ultimately the result is this
8 particular document.

9 Q And then after all of that is worked out
10 then, at least in 1992, the document was signed by
11 the parties as it related to what was agreed to in
12 1989, correct?

13 A Yes. That's the case here.

14 Q What was your understanding of the duration
15 of retiree health care benefits for hourly employees?

16 MR. BURCHFIELD: Object to form.

17 A Which hourly employees are we -- what time
18 frame are we talking about?

19 BY MR. RADTKE:

20 Q The employees who retired, let's say, between
21 1989 and 1992.

22 A What was the duration, my understanding of
23 it? That it is subject to change and modification
24 and termination, et cetera, consistent with the
25 language that we see in this document that was signed

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1 off by the union.

2 Q Would those changes that you believe were
3 available have to be negotiated with the union?

4 MR. BURCHFIELD: Object to form and foundation.

5 A I think that's an open issue that I don't
6 want to address because I'm not certain.

7 BY MR. RADTKE:

8 Q Was it your understanding that retirees who
9 retired before the 1989 contract also could have
10 their benefits changed?

11 MR. BURCHFIELD: Object to form and foundation.

12 A That level of detail I do not recall.

13 BY MR. RADTKE:

14 Q I'm going to hand you what's been marked as
15 Exhibit 8. That one is a previously marked exhibit.
16 You don't have to give it to the court reporter.

17 Have you ever seen this document before?

18 A Yes.

19 Q This document that I'm referring to has been
20 marked previously as Exhibit 8. It's dated
21 October 27, 1989.

22 It's a Retirement Income Program Guide
23 Booklet, correct?

24 A Yes.

25 Q And when did you see this document, during

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1 your employment at BorgWarner?

2 A Yes.

3 Q At some point pensions became under your
4 authority, correct?

5 A Yes.

6 Q And this guide booklet, this is a document
7 that's negotiated between the union and the company?

8 A Yes.

9 Q And Muncie, correct?

10 A Yes.

11 Q What's the purpose of the guide booklet?

12 A It reflects the level of benefits and the
13 provisions and the terms and the operation of various
14 and sundry pension provisions for employees,
15 including the level of benefits.

16 Q And it reflects the negotiated agreement that
17 was bargained by the parties, is that accurate?

18 A Yes.

19 Q Because the parties bargained pension
20 benefits and eligibility, correct?

21 A Yes.

22 Q Could you look at Page 17 of this document
23 under Highlights? Do you see where it says Group
24 Insurance at Retirement, that provision?

25 A Yes.

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1 Q Who would have put together the highlights
2 that are part of Exhibit 8?

3 A Typically it would have been a draft of
4 either an existing document or a new document done,
5 again, locally by the management at DTP Muncie.

6 Q Would the Retirement Income Program Guide
7 Booklet be provided to employees and retirees?

8 A My understanding was that these documents
9 were made available to employees and retirees.

10 Q Were you aware that the group insurance
11 reference was in the pension plan?

12 A I see it.

13 (Exhibit 55 marked as requested.)

14 BY MR. RADTKE:

15 Q Mr. Turczynowsky, you've been handed a
16 document that's been marked as Exhibit 55. It's a
17 fax and then an attachment to the fax. It looks like
18 it was faxed in February of 1989 from Mr. Nuerge to
19 yourself.

20 Who is Mr. Nuerge?

21 A He was the manager -- benefits manager at the
22 Muncie plant.

23 Q Have you ever seen this document before?

24 A I'm sure I did.

25 Q You don't remember what fax you received 21

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1 or 22 years ago?

2 A Not at all.

3 Q Okay. Have you ever seen booklets or
4 documents that are similar to what the attachment is
5 to the fax, I guess Pages 2 and 3 of this exhibit?

6 A They do look somewhat familiar.

7 Q Did you review these summaries?

8 A I may not have personally reviewed these
9 summaries, but certainly someone in our area would
10 have reviewed these.

11 Q And these summaries were given to employees
12 and retirees to describe their benefits as of
13 retirement?

14 A That is my understanding, but I cannot be
15 certain because I was not present when such an
16 activity may have taken place.

17 Q That took place at the Muncie plant?

18 A Yes.

19 Q If you look at the third page where it
20 discusses health insurance with survivor option, it
21 says, If a survivor option is elected and your spouse
22 becomes eligible to receive a survivor benefit,
23 health insurance is in effect for the rest of the
24 spouse's lifetime as long as he or she does not
25 marry. The company pays the premium. In the case of

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1 remarriage, health insurance is canceled.

2 Is that your understanding of the duration
3 of retiree health care benefits for a surviving
4 spouse of retiree?

5 MR. BURCHFIELD: Object to form and foundation.

6 A I don't know.

7 I think this document has been superseded.

8 (Exhibit 56 marked as requested.)

9 BY MR. RADTKE:

10 Q I'm going -- you've been handed a document
11 that's been marked as Exhibit 56, and the cover page
12 shows that it was an exhibit in a case involving
13 BorgWarner Transmission Products and the UAW.
14 Underneath that is -- the first page is a March 24,
15 1987, letter from Bill Studlow to Dick Nuerge.

16 Do you know who Mr. Studlow is?

17 A He was another one of my colleagues in the
18 department.

19 Q So he worked at BorgWarner headquarters?

20 A He did.

21 Q Along with Marty Burghgraef?

22 A That's correct.

23 Q He was copied on this letter, correct?

24 A Yes.

25 Q And then attached to that letter is a draft

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1 of an insurance booklet for hourly retirees prior to
2 October 1, 1986. I'm reading that off the letter
3 that Mr. Studlow wrote Mr. Nuerge.

4 A Okay. I see it.

5 Q Have you ever seen the attached document
6 before?

7 A I cannot say for certainty.

8 Q You'll notice when you were paging through
9 this that there was handwriting throughout this
10 document.

11 Do you recognize any of the handwriting
12 that's contained in this document?

13 A I believe it was Mr. Studlow's handwriting.

14 Q Thank you. You've been handed --

15 A May I just --

16 Q Yes.

17 A -- go back to an exhibit that you had
18 previously provided, which was Number 55?

19 Q Okay.

20 A And I made the comment that I think this
21 particular document was superseded. We noted that,
22 correct?

23 Q We did note that.

24 A Thank you.

25 Q Here is a document that's been marked

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1 Exhibit 9.

2 Have you ever seen that document before?

3 A I don't think so.

4 Q You don't know whether the document that was
5 marked as Exhibit 9, the one that you're holding in
6 your hand, is what superseded Exhibit 55?

7 A No, I don't.

8 Q If you look at the last page, the very last
9 page, it says -- you got my copy, so it's
10 highlighted -- you will see it says 1-90.

11 A I see it.

12 Q Do you know whether that would indicate that
13 this document was produced in January of 1990?

14 A I do not.

15 Q I'll show you another one. This document has
16 been marked as Exhibit 22.

17 Have you ever seen this document?

18 A I don't recall it.

19 Q You will notice that this document again on
20 the last page has a 5-95 in the little tiny lettering
21 on the bottom.

22 A I see it.

23 Q And that it also refers to under prescription
24 drugs for persons -- and that's on the last page --
25 for persons retiring on or after June 1, 1995, the

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1 drug deductible will be nine dollars for brand and
2 five dollars for generic, et cetera.

3 Does that refresh your recollection that
4 this could have been a document that was available in
5 1995, 1996?

6 A Yes.

7 Q Thank you.

8 You said that with respect to Exhibit 55
9 there was a revision of Exhibit 55.

10 A I didn't say revision. I said superseded.

11 Q I'm sorry. I wasn't trying to misspeak.

12 Exhibit 55 was at some point superseded by a
13 different document, is that accurate?

14 A I believe so. I don't recall seeing these
15 types of documents with any degree of certainty or
16 detail. But I do know that certain provisions that
17 appear in this document were included in the health
18 insurance agreement that we had looked at earlier
19 with respect to -- we have -- the company has the
20 right, subject to all the provisions of the
21 bargaining agreement, et cetera, to modify, change,
22 and/or terminate the plans.

23 Q Okay. Do you know when those documents were
24 created?

25 A Well, they were the ones that you had shown

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1 me.

2 Q No.

3 A These here?

4 Q Yeah.

5 A I have no idea. I have no idea. They appear
6 to me to be very dated. But I can't speak to the
7 date. The language there from what I can see
8 suggests that it's too open-ended in many areas and
9 that we probably would not have retained that kind of
10 an approach. I could be wrong. I could be wrong.

11 Q When you say too open-ended, what do you mean
12 by that?

13 A Open-ended in the sense that it doesn't
14 provide for any disclaimers. I don't see anything
15 here, although it does talk about refer to the
16 booklet for details. I think there should have been
17 more specificity as to what booklet we're talking
18 about. And, in fact, the legal document would always
19 govern as opposed to a summary written in layman's
20 terms that may have been handed out.

21 Q But certainly that document, if that document
22 was distributed to employees or retirees, reflects
23 the company's understanding of what the benefits were
24 for the retirees, correct?

25 A What I'm suggesting, there is language here

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1 that probably should have been more stringent as far
2 as what governs as opposed to a handout that may have
3 been presented to someone.

4 Q I understand, but going back to my question,
5 the company wouldn't hand out something that they
6 knew was false, right?

7 MR. BURCHFIELD: Object to form.

8 A Or perhaps they didn't know any better.

9 BY MR. RADTKE:

10 Q Well, the company -- that was handed out by
11 BorgWarner DTP's pension department, correct?

12 A I assume so.

13 Q So that was their job to know what the
14 benefits were that retirees were going to get, right?

15 MR. BURCHFIELD: Object to form, argumentative.

16 A There was a level of sophistication that
17 probably, while well-intentioned, may not always have
18 been the correct approach locally. In other words,
19 they were well-intentioned, but they didn't have the
20 legal expertise or other explicit details that should
21 have been included in some of these documents. And,
22 again, they appear to be somewhat dated to me. In
23 other words, they were sent on such and such a date,
24 but who knows how far back these things actually
25 went. And the major provision should have been in

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1 there that the actual plan document will govern in
2 all situations where there was a dispute or if a
3 dispute arises. And that language is not in here.
4 I'm sorry. That was my only point that I was trying
5 to make.

6 BY MR. RADTKE:

7 Q That's fine. I'm going to hand you a
8 document that's been marked previously as Exhibit 11.
9 It's an Agreement on Modification and Extension of
10 Labor Contract, Existing Labor Contract.

11 Have you ever seen that document before?

12 A I have.

13 Q Do you recollect that the parties reached
14 this agreement in 1990 to extend the labor contract,
15 the health insurance agreement, the retirement income
16 program, et cetera, to 1995?

17 A I see that.

18 Q Do you remember that at all?

19 A Not to that detail.

20 Q Okay. Do you remember that the parties were
21 going to attempt to discuss and reach agreement as it
22 related to health care cost and post-retirement
23 benefits, among other items, in 1990?

24 A I do.

25 Q And do you recall that there were various

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1 committees that were formed to discuss these issues?

2 A I do.

3 Q Were you on any of those committees?

4 A No.

5 Q If you look at Exhibit 3, it's a joint letter
6 of agreement on post-retirement benefit liabilities.

7 Do you see that?

8 A I see it.

9 Q Now, have you ever seen another version of
10 Exhibit 3, which contained a different Paragraph 6?

11 MR. BURCHFIELD: Paragraph 6 is the last
12 paragraph on the page?

13 MR. RADTKE: Yeah.

14 A I don't recall.

15 BY MR. RADTKE:

16 Q Mr. Trender testified in another lawsuit
17 between BorgWarner -- in that case it was against the
18 UAW -- and he recalled that Exhibit 3 -- there was a
19 prior version of Exhibit 3 in which the last
20 paragraph said that the company acknowledges and
21 agrees that post-retirement benefits are guaranteed
22 for the lifetime of the retiree.

23 Do you recall seeing a version of Exhibit 3
24 with that language?

25 MR. BURCHFIELD: Do you have his testimony there

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1 that I could look at?

2 MR. RADTKE: Yeah.

3 MR. BURCHFIELD: Thanks. Object to the form of
4 the question and foundation.

5 A I do not recall that.

6 MR. RADTKE: Okay.

7 MR. BURCHFIELD: Thanks.

8 BY MR. RADTKE:

9 Q Mr. Trender testified that Paragraph 6 was
10 rejected by BorgWarner corporate headquarters and
11 that he drafted the Paragraph 6 that appears at the
12 bottom of Exhibit 3 of -- that is Exhibit 11.

13 Does that refresh your recollection at all?

14 A Mr. Trender rewrote Paragraph 6?

15 Q That's what he testified to.

16 A I can't speak to his testimony, and I don't
17 recall ever seeing something other than this
18 particular language in any of the documents.

19 Q Okay. You understood, though, as of 1990
20 that the union's position was that current retirees
21 have lifetime vested benefits, correct?

22 A That was the union's contention. That was
23 not my contention.

24 Q Otherwise we wouldn't be here, I think.

25 MR. BURCHFIELD: Well, you never know. I'm sure

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1 we would find something to argue about.

2 MR. RADTKE: You may not be involved in that.

3 BY MR. RADTKE:

4 Q I'm going to hand you what's been marked as
5 Exhibit 16.

6 Have you ever seen that document before?
7 That might have gotten misstapled.

8 A This section?

9 Q Exhibit 11, which is the same as this.

10 MR. BURCHFIELD: It's misstapled.

11 MR. RADTKE: It's stapled incorrectly.

12 MR. BURCHFIELD: You can take it off.

13 MR. RADTKE: Take it off. Thank you.

14 BY MR. RADTKE:

15 Q Have you ever seen that document before?

16 A Not in its entirety. There are certain
17 components here that I recognize with respect to the
18 financials that we probably provided relating to the
19 PRB calculations; the actual values of the
20 accumulated post-retirement benefit obligations, and
21 the projected levels in accordance with the Financial
22 Accounting Standards Board.

23 Q What about the part that is UAW 735 where it
24 talks about Health Improvement Plan? You'll see at
25 the bottom.

1 A Health Security Plan, is that the one you're
2 referring to?

3 Q Health Improvement Plan.

4 A 733?

5 Q We can start there. You're right. Let's
6 start with Health Security Plan.

7 Do you have any recollection of seeing this
8 before?

9 A No, no, no.

10 Q You'll notice --

11 A Hell no.

12 Q Why are you upset about this?

13 A No particular reason.

14 Q You will notice that the characteristics of
15 the Health Security Plan would be that the current
16 retirees would be grandfathered under benefits they
17 retired with?

18 A I see that.

19 Q And that current employees who retire before
20 2003 are grandfathered under the benefits that they
21 retired with?

22 A I see that.

23 Q What is a Health Security Plan?

24 A It was something that I think was probably
25 concocted locally as a reference to what they were

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1 trying to accomplish.

2 Q Okay. You will notice under -- if you go to
3 735, there is -- this is titled Health Improvement
4 Plan.

5 Were you involved in any way with respect to
6 this document, this page?

7 A No.

8 Q And again --

9 A No, no.

10 Q Okay. You'll notice that this also
11 references employees and current retirees as being
12 grandfathered?

13 A I do. I should point out that these look
14 like and they are titled proposals.

15 Q I understand that. There is all kinds of
16 words in there that we don't need to discuss.

17 A Okay.

18 MR. BURCHFIELD: How are you doing?

19 THE WITNESS: Great.

20 MR. BURCHFIELD: Do you need a break or anything?

21 MR. RADTKE: I'm happy to -- I mean, if you want
22 to take a break, that's fine.

23 THE WITNESS: What time do we have?

24 MR. BURCHFIELD: It's a little after -- it's
25 about ten after noon, and my -- I don't know if this

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1 has to be on the record or not, but it can be. We
2 could go for another 45 minutes or an hour or so.

3 MR. RADTKE: Why don't we go off the record.

4 (Recess was taken.)

5 BY MR. RADTKE:

6 Q I'm going to hand you what's been marked as
7 Exhibit 18, previously marked as Exhibit 18.

8 Have you ever seen this document?

9 A I have.

10 Q You were involved in the 1992 negotiations,
11 correct?

12 A I was.

13 Q And this document is the agreements that were
14 reached in 1992 as they related to health insurance
15 and ancillary matters, is that accurate?

16 MR. BURCHFIELD: Object to form.

17 A It appears so.

18 BY MR. RADTKE:

19 Q Okay. This agreement actually was negotiated
20 in 1992 even though the parties had extended the '89
21 agreement to '95, correct?

22 A I think that's correct.

23 Q And this agreement was in some respects to go
24 through 1998 or expire in 1998, correct?

25 A March -- excuse me -- January 1, '93, through

1 March 11, 1998. And this agreement superseded the
2 previous agreement and the '89 bargaining agreement
3 and health insurance agreement.

4 Q With respect to health insurance before 1992,
5 were there any changes in their retiree health care
6 benefits as a result of this agreement?

7 A I don't think so.

8 Q There was a new PPO plan that was negotiated
9 for active employees and future retirees in the 1992
10 negotiations, correct?

11 MR. BURCHFIELD: Object to form.

12 A For active employees and certain pre-Medicare
13 retirees.

14 BY MR. RADTKE:

15 Q Was that past pre-Medicare retirees as well
16 or just future retirees, if you remember?

17 A According to the document, it was the future
18 retirees.

19 Q And how was the PPO that was negotiated
20 different than the managed care that was in place and
21 that you described previously?

22 A The PPO provided for contracted rates; that
23 is, primarily discounts by physicians, by the
24 hospital, by other medical providers, for the benefit
25 of the employees, so it favored the employee and

1 retiree as well as the company. The managed care had
2 no such discount. Managed care was strictly to allow
3 employees to seek or secure intervention, where
4 appropriate, with regard to the medical treatment
5 independent of the costs except for the managed
6 care -- I'm sorry -- the medical case management part
7 of the program where serious certain illnesses were
8 handled differently and provided guidance for trying
9 to treat those in the most cost-effective manner
10 possible.

11 Q So the parties bargained a participating
12 provider organization which would give discounts to
13 employees and retirees for services?

14 A Discounts and/or fixed fees. It was a
15 financial arrangement.

16 Q Would those fixed fees be able to be adjusted
17 later on?

18 A My recollection was that certain hospital
19 fees were based on Medicare DRG rates, and to the
20 extent that Medicare DRG rates changed, that would
21 also allow the hospitals to adjust those rates for
22 the PPO plan.

23 Q Is that sometimes referred to as usual and
24 customary?

25 A No. An important distinction to make, that

1 in the past everything was usual and customary. The
2 employee buys, the company pays whatever the
3 prevailing fee was. Under the contracted
4 arrangement, it's quite different in that it's not
5 whatever the provider wants the charge, it's a fixed
6 fee that the provider has to live by that is either a
7 discount or some other negotiated level of cost
8 associated with the delivery of that service.

9 Q Okay. The parties also negotiate -- I'm
10 looking at Page -- I'll refer -- because there is a
11 lot of different page numbers, I'll refer to the DTP
12 page number -- 437.

13 A I have that page.

14 Q And you will see that the parties negotiated
15 a prescription drug deductible schedule for active
16 employees and future retirees as well, correct?

17 A Yes, I see that.

18 Q And is that your recollection?

19 A It is.

20 Q So let me ask you a hypothetical question.
21 I'm a current employee and I retire in 1994 and I opt
22 into the PPO plan, okay.

23 A Uh-huh.

24 Q At the time of my retirement, my prescription
25 drug card deductibles would be four dollars and seven

1 dollars, correct?

2 A And I retired 1/1/94?

3 Q Right.

4 A Yes. I think that's correct.

5 Q On January 1, 1995, what would my
6 prescription drug deductibles be?

7 A Five and nine.

8 Q So if you retired in January of 1994, the
9 parties negotiated how your deductibles would
10 increase over this period?

11 A If memory serves me, the intent was that
12 these would increase for anyone who retired on or
13 after 1993, so if you retired in '94, you would get
14 that increase in 1995, so it was an escalator and not
15 a retirement date.

16 Q Isn't it true that employees -- current
17 employees who were employed as of 1992 had an option
18 to stay in the managed care program until March
19 of 1995 or they could go into the PPO program?

20 A I don't --

21 MR. BURCHFIELD: Object to form.

22 THE WITNESS: I don't remember that provision. I
23 don't recall it.

24 BY MR. RADTKE:

25 Q I'll ask you to look at DTP 440, Section K.

1 A I see it.

2 Q Does that refresh your recollection?

3 A Yes, it does. Thank you.

4 Q So if I was that retiree and I retire in
5 January of 1994, I could say I want to stay in the
6 1992 plan or I could say I want to go into the PPO
7 plan, and if I went into the PPO plan, there would be
8 an escalator on prescription drug costs, stop loss,
9 and deductibles for major medical, correct?

10 A Yes.

11 Q If I said no, I'm going to stay in the '92
12 plan, the prescription drug costs would not increase
13 and the other stop loss and deductibles would not
14 increase, correct?

15 MR. BURCHFIELD: Object to form.

16 A I can't speak to the -- to your statement. I
17 just don't have that detail at my disposal.

18 BY MR. RADTKE:

19 Q Okay. We know that -- I'm sorry.

20 Current employees who retired after
21 March 11, 1995, would have the insurance plan in
22 effect at the time according to Paragraph K?

23 A I see that.

24 Q So at that point, if I retired after
25 March 11, 1995, I wouldn't have that option?

1 A Yes. That's my recollection, yes.

2 Q If you look at DTP 443, there is a chart with
3 deductibles and stop loss that increase by five
4 percent, correct?

5 A Yes.

6 Q And that was bargained by the union and the
7 company about how the deductibles and the stop losses
8 would increase?

9 A Yes.

10 Q And it's accurate to say that the company and
11 the union bargained deductibles and stop loss beyond
12 the term of this agreement, correct?

13 A As a minimum.

14 Q What does that mean?

15 A That if nothing ever changed, it would at a
16 minimum be these amounts.

17 Q How would they ever change?

18 A I believe Paragraph 5 on Page 1 would allow
19 both the company and the union to make adjustments in
20 subsequent years, and that is part of -- other
21 negotiation processes would permit both the company
22 and the union to do that, and that I think in
23 reality, if memory serves me, is what happened.

24 Q Was that -- what the company and the union
25 could bargain later, was that related solely to the

1 stop loss and the deductible?

2 A No, I believe it was the whole spectrum of
3 benefit programs and particularly health care.

4 Q So is it your understanding that Paragraph 5
5 would allow the parties to negotiate changes in
6 retiree health care benefits in the future that would
7 affect past retirees who were in the PPO program?

8 A Yes.

9 Q Even beyond the term of the 1992 agreement?

10 A Yes.

11 Q Even beyond the term of the 2002 stop loss/
12 deductible?

13 A Yes, I think so. To the extent the
14 collective bargaining was permitted and the company
15 and the union desired to do that, it could never be
16 used, according to the language here, as a final
17 offer, but in fact it could be discussed and talked
18 about, and in reality it was in subsequent
19 negotiations.

20 Q If you look at DTP 447, Exhibit C, this is a
21 health care program for employees who were hired
22 after December 31, 1992, correct?

23 A Yes.

24 Q So when you reached the agreement in 1992,
25 Exhibit 18, Exhibit C, Principles, did not affect

1 anyone who was currently employed as of that time,
2 correct?

3 A It stated that it only impacted persons hired
4 after December 31, '92, except for those employees on
5 layoff status as identified in Exhibit A, correct.

6 Q And could you explain what was negotiated as
7 set forth in Exhibit C?

8 MR. BURCHFIELD: Could you reread that question,
9 please?

10 (From the record above, the reporter read
11 the following:

12 "Q And could you explain what was
13 negotiated as set forth in Exhibit C?")

14 MR. BURCHFIELD: Object to form.

15 A It was intended to provide a financial
16 vehicle for future hires to begin to accumulate funds
17 in an IRS-approved account so that employees can
18 accumulate monies with assistance from the company
19 with the contributions they make to accumulate monies
20 so that when they ultimately leave the company or
21 retire that those funds would be available to them to
22 be able to purchase insurances in the open market, or
23 to the extent that an insurance plan was made --
24 still available for purchase through BorgWarner, that
25 they would be able to access that particular plan.

1 In general terms, that was the concept behind this.
2 It was the forerunner of what we now have, which are
3 retiree health accounts or health care spending
4 accounts.

5 BY MR. RADTKE:

6 Q The program that was negotiated for future
7 employees was different than the program that was in
8 place for current employees and current retirees,
9 correct?

10 A Very much different. The union and the
11 company agreed that there would not be any company
12 paid or provided health care for those individuals
13 hired after 1/1 of 1993 but instead would make
14 available funds for those employees to purchase their
15 own insurances, not just upon retirement but upon
16 leaving the company.

17 Q And the benefits under Exhibit C were vested,
18 correct?

19 A That is correct. It says vesting was five
20 years, that once an employee had five years of
21 continuous service, that whatever monies were
22 available in that account; that is, that -- the
23 employee monies were always vested. It was the
24 company matching contribution that required five
25 years of vesting.

1 Q And is it true that the company's goal in the
2 1992 negotiations was to stop -- let me rephrase --
3 to reduce retiree health care benefit costs to the
4 company for future employees?

5 MR. BURCHFIELD: Object to form.

6 A It was the desire of the company to control
7 future costs related to post-retirement benefits.

8 BY MR. RADTKE:

9 Q And you would agree that for future employees
10 Exhibit C was a reduction in the benefits that they
11 would be provided upon retirement?

12 A I don't know -- I'm not sure I agree with
13 your statement. You can't reduce something that is
14 not available. It was not available for people hired
15 after 1/1/92, so it's not a reduction. It was a
16 different form of accumulation of assets for those
17 new hires.

18 Q With respect to people who were future hires,
19 if they lived to be a hundred, they would have
20 company paid retiree health care benefits, correct?

21 A No.

22 Q Okay.

23 A They would have available to them a subsidy
24 by the company to continue to purchase their health
25 care benefits. So whatever plan that they would

1 choose at that time or whatever plan that they were
2 enrolled with the company would subsidize that on
3 their behalf.

4 Q The company would pay the cost --

5 A The cost, right, but not of the health plan.

6 Q If you look at the bottom of Page 449, it
7 says, If a participant reaches 100 years of age and
8 the retiree health account has been depleted, the
9 company will pay the cost of the health plan for the
10 retiree only.

11 A But remember that the retiree chose whatever
12 plan that they were participating in, so that could
13 have been a supplemental plan to Medicare, it could
14 have been a plan on the open market. So we're not
15 saying that the company would provide the plan. The
16 company would pay for the plan that the retiree was
17 enrolled in but for the retiree only.

18 Q Going back to that stop loss/deductible chart
19 that we referenced early on. It's on Page DTP 443.

20 A Yes.

21 Q So if I retired taking my same hypothetical
22 as before in January of 1994 and I opted into the PPO
23 plan, okay -- are you with me?

24 A Yes.

25 Q In 1999, my deductible would be \$175.89 and

1 my stop loss would be \$844.26?

2 A Yes.

3 Q Do you recollect any discussion during the
4 1992 negotiations where you were present where
5 Mr. Daffara stated to the union bargainers that
6 because the parties negotiated a 401(h) plan for
7 future employees that the company would no longer
8 argue that retiree health care benefits for past
9 retirees and current active employees were not
10 vested?

11 A Please read that question back once more.

12 (From the record above, the reporter read
13 the following:

14 "Q Do you recollect any discussion
15 during the 1992 negotiations where you
16 were present where Mr. Daffara stated to
17 the union bargainers that because the
18 parties negotiated a 401(h) plan for
19 future employees that the company would no
20 longer argue that retiree health care
21 benefits for past retirees and current
22 active employees were not vested?")

23 THE WITNESS: No.

24 BY MR. RADTKE:

25 Q Do you remember any similar discussion in

1 1992 or 1995?

2 A Not while I was ever present.

3 Q Who's John Daffara?

4 A He was the vice-president of human resources
5 at the DTP Muncie plant in 1992 through actually
6 1999 -- 1991 through 1995. He was the lead
7 negotiator in the '92 and '95 negotiations.

8 (Exhibit 57 marked as requested.)

9 BY MR. RADTKE:

10 Q Mr. Turczynowsky, you've been handed what's
11 been marked as Exhibit 57. It's a one-page document
12 that is dated September 14, 1992. It's to you.

13 Have you ever seen this document before?

14 A There is some familiarity to this, yes.

15 Q Do you know -- did you receive it in about
16 1992?

17 A I don't recall.

18 Q Do you know who wrote this document?

19 A No.

20 Q It says on the little -- on the bottom it
21 says JD92151.

22 Could that be John Daffara?

23 A I don't know.

24 Q Do you know what this document was
25 referencing?

1 A I don't know the complete context of this
2 document. It looks like an excerpt of some sort from
3 somewhere, but I can't speak to it.

4 Q You mentioned previously that there were
5 certain laid-off employees in 1992 during the
6 negotiations. In Paragraph 3 it references the
7 laid-off employees.

8 A Yes.

9 Q Does that refresh your recollection?

10 A I think that's consistent with the prior
11 document that said that new hires would be treated
12 differently except for certain laid off employees,
13 and I think that this is in reference to that.

14 Q In the 1992 negotiations, were there two
15 pension plans that were available to hourly
16 employees?

17 A No.

18 Q Was there a defined benefit plan and a
19 defined contribution plan?

20 A There was a defined benefit plan.
21 Subsequently a defined contribution plan was
22 negotiated.

23 Q When was that negotiated?

24 A I believe it began with the '92 negotiations.
25 Also known as a 401(k).

1 Q And so in Paragraph 3 it says that laid-off
2 employees will have a choice of pension plans.

3 So would that be between the defined benefit
4 plan and the 401(k) plan?

5 A I would agree with your interpretation of
6 that.

7 Q Within the window period, was there a window
8 period to choose -- the employees had the ability to
9 choose between which one they wanted to go with?

10 A Again, I don't know the specific details, but
11 it could have been a very short period of time once
12 they returned or recalled to work that they could
13 choose which plan they wanted to go into.

14 Q And then the next statement or the next part
15 of this item says, they will be covered under the
16 company paid health care benefit plan. And then
17 there is the Number 5 with an arrow that says,
18 Benefits are at the level at the time of retirement.

19 A My recollection of that was to allow these
20 employees, number one, the choice of the defined
21 benefit plan or the defined contribution plan and
22 that they would also be given a choice, if they so
23 desired, to either continue in whatever
24 company-provided medical plan or health care plan was
25 available or to go into the 401(h) program, but that

1 was an option -- we knew that wasn't going to happen.
2 So they would be eligible to participate in whatever
3 company provided health care plan would be available
4 at the time that they retired.

5 Q And the benefits would remain at that level
6 during the retirement?

7 A No. The benefits would be consistent with
8 what schedules were negotiated here, because,
9 remember, these are future retirees after 1/1/93, so
10 if they weren't retired, they would have fallen into
11 whatever category we have here that was negotiated as
12 part of the '92 program.

13 Q So their benefit levels with respect to
14 prescription drugs and stop loss and deductible would
15 be at the time of their retirement?

16 A Yes.

17 Q I want to show you what's been marked as
18 Exhibit 19. It's the 1992 health insurance
19 agreement.

20 Have you ever seen this document before?

21 A Yes.

22 Q Do you know whether this document was ever
23 signed?

24 A I don't think it was, but I can't be certain.

25 Q Okay. Is it your recollection that the

1 company provided benefits in accordance with the
2 terms that were encompassed in the health insurance
3 agreement even though it wasn't -- even if it wasn't
4 signed?

5 A Yes.

6 Q Did you have any role in putting this
7 document together?

8 A We assisted the people locally in getting
9 this thing updated, and we also had the legal
10 department at that time review this document for
11 accuracy related to current legal legislation
12 requirements.

13 (Exhibit 58 marked as requested.)

14 BY MR. RADTKE:

15 Q You've been handed -- Mr. Turczynowsky,
16 you've been handed a document that's been marked as
17 Exhibit 58. It's a June 24, 1993, memo from you to
18 Mr. Nuerge with an attachment -- actually, a number
19 of attachments.

20 Have you ever seen this document before?

21 A It appears familiar.

22 Q What is this document?

23 A These documents attempt to capture on the
24 spreadsheets the key elements of the levels of
25 benefits for administration purposes with respect to

1 the various and sundry benefits that are being
2 provided to hourly employees and salary employees.

3 Q If you look at the second page, there is a
4 reference to branches, Branch 65, Branch 66, Branch
5 70, Branch 71, for instance.

6 A Yes.

7 Q What does that mean?

8 A Those were third-party administrator
9 notations, how they identified the various categories
10 of individuals and where they fall with respect to
11 their administrative process. So, for example, an
12 active employee was a Branch 1; the retirees were
13 always deemed to be in the Branch 60 categories and
14 higher. It was just intended to separate that while
15 they are part of the overall umbrella of the 15973
16 policy that there were different benefit provisions
17 within that policy depending on who these employees
18 or retirees were.

19 Q So your benefits, if you're a retiree, were
20 different depending on when you retired?

21 A In 1992, that's what this document reflects,
22 only in what was agreed to in 1992.

23 Q What do you mean by that?

24 A That's what was negotiated. So this reflects
25 what happened with the 1992 negotiations, and it was

1 a one-year window only. So, in other words,
2 effective 1/1/93 through the end of the year, this
3 reflects the level of benefits for these individuals.
4 Effective 1/1/94, no doubt, you have a separate grid
5 that shows different levels of benefits for these
6 same categories of retirees and active employees,
7 both hourly and salaried.

8 Q Okay. This obviously is a draft in that
9 there is a number of corrections.

10 A It is. It's a clarification. I'm sure you
11 have in your dockets there clean copies of the
12 ultimate grids.

13 (Exhibit 59 marked as requested.)

14 BY MR. RADTKE:

15 Q You've been handed a document that's been
16 marked Exhibit 59. It's a September 14, 1993,
17 memorandum from yourself to Mr. Nuerge regarding
18 health plans. I apologize. The attachment is not
19 attached to this document, but you reference an
20 attachment with different plan design matrixes.

21 What were you trying to convey to Mr. Nuerge
22 in this memo?

23 A For the salaried retirees, over time there
24 were what we used to refer to as different
25 generations of retirees; in other words, the

1 branching. And when changes were made, they were
2 always -- they were not always made with the idea
3 that everyone should be looking at virtually the same
4 plan of benefits, that these generations, as pointed
5 out under the salaried retiree group, created a
6 complexity that, number one, was extremely difficult
7 to administer, was inconsistent from an
8 administrative standpoint, also very costly. So what
9 I was suggesting here for the salaried employees is
10 that you take all these plans where you might just
11 have incremental differences, consolidate them into
12 one, or at the second alternative, consolidate them
13 into two, just two plans for the retirees.

14 Q Was your recommendation of consolidation of
15 plans for both hourly retirees and salary retirees?

16 A (Nodding.)

17 Q Just salary?

18 A Salaried at this point. September 14th,
19 1993. I wish you had copies of the matrices and I
20 could definitively say -- well, I'm obviously saying
21 it in the plans that we're only talking about -- the
22 matrices are only talking about the salaried
23 retirees. There is no reference here to hourly in
24 terms of the changes that I was suggesting.

25 Q Were those changes ever carried out with

1 respect to salaried retirees?

2 A Yes.

3 Q During your employment at BorgWarner, were
4 they ever carried out with respect to hourly?

5 A What I've suggested here?

6 Q Yes.

7 A Not to my knowledge, not to my knowledge.
8 And I could only speak up to 2005.

9 Q That's what I'm asking. Only up to 2005.
10 I'm not asking you what happened after that.

11 A Okay.

12 Q But your recollection is up until 2005 there
13 were a number of different plans for hourly retirees
14 that -- their benefits depended on their date of
15 retirement?

16 A Essentially that's a correct statement.

17 Q And the company never consolidated them into
18 one or two benefit plans?

19 A No, but -- but there were some consolidations
20 that took place for the hourly that the union agreed
21 to which were materially insignificant as far as any
22 benefit changes were concerned but only in the
23 interest of simplifying the administration and the
24 cost of that administration as well as the
25 understanding that retirees have of what their

1 programs were. To the best of my recollection, it
2 may have been one or two branches at most, but the
3 benefit levels themselves were not materially
4 impacted.

5 Q Thank you.

6 A Just to make the point that these
7 consolidations would have been for people who had
8 retired well before 1989, and if memory serves me,
9 probably before 1986.

10 Q With respect to the salaried?

11 A The hourly. Those two -- but these here
12 would have covered all salaried employees regardless
13 of when they retired.

14 Q When you were speaking about what the union
15 agreed to where there was some administrative changes
16 and whatever else you said, that was related to
17 retirees who retire before 1989?

18 A I believe that was correct, yes. At that
19 time that was the 1989 issue.

20 MR. RADTKE: Can we go off the record for a
21 second?

22 (Recess was taken.)

23 BY MR. RADTKE:

24 Q Before we broke for lunch, Mr. Turczynowsky,
25 you were talking about -- or I showed you a document

1 about combining the salaried retiree health care plan
2 into two plans or one plan, correct?

3 A Yes.

4 Q Did you ever make a proposal to the union
5 about combining all of the different retiree health
6 care plans into a single plan?

7 A Not that I recall.

8 Q Do you recall anyone from BorgWarner's
9 management team making such a proposal to the union?

10 A Not that I'm aware of.

11 Q You've been handed a document that's been
12 marked as Exhibit 24.

13 Have you ever seen that document before?

14 A Yes.

15 Q Is this the Retirement Income Program Guide
16 Booklet from 1995?

17 A Yes.

18 Q You got to answer yes or no.

19 A Yes, that's what this states.

20 Q And this is the document that was created
21 after contract negotiations in 1995?

22 A Yes.

23 Q Do you know whether this document was ever
24 signed?

25 A I do not.

1 Q There were contract negotiations in 1995?

2 A Yes.

3 Q And you were a participant in those contract
4 negotiations, is that accurate?

5 MR. BURCHFIELD: Object to form.

6 A Limited participation.

7 BY MR. RADTKE:

8 Q And did the parties reach a new health
9 insurance agreement in 1995?

10 A As I recall, yes.

11 Q I'm going to show you what's been marked as
12 Exhibit 23.

13 Is that the document that was drafted as a
14 result of those contract negotiations?

15 A I believe that's correct.

16 Q Did you have any role in drafting that
17 exhibit that I just handed you?

18 A We would have had a review role of whatever
19 draft was put together locally.

20 Q Do you recall whether that document was ever
21 signed by the parties?

22 A No, I do not.

23 Q Do you know whether the company lived up to
24 the -- provided the benefits that are encompassed in
25 this exhibit?

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1 A Yes, I believe they did.

2 (Exhibit 60 marked as requested.)

3 BY MR. RADTKE:

4 Q You've been handed a document that's been
5 marked as Exhibit 60. It's a December 5, 1996, memo
6 from Mr. Nuerge to yourself. Have you ever seen --
7 and there is attachments to that memorandum.

8 Have you ever seen those documents before?

9 A I had seen this.

10 Q If you look at the page that's marked
11 DTP 010524.

12 Do you see that page?

13 A I do.

14 Q And you will notice that there are different
15 deductibles and stop loss and prescription drug
16 deductibles for retirees based on their date of
17 retirement, is that accurate?

18 A I see that, yes.

19 Q So even as of 1997 the company continued to
20 provide benefits in line with what was negotiated
21 back in the 1980s and early 1990s, correct?

22 MR. BURCHFIELD: Object to form and foundation.

23 A It appears so.

24 BY MR. RADTKE:

25 Q And if you look at the next two pages, there

1 are I believe what you referred to as a matrix, which
2 set forth different insurance features for different
3 active employees and retirees.

4 A Yes.

5 Q And the retiree insurance features vary based
6 on the date of your retirement and/or which plan you
7 operate, is that accurate?

8 A Yes.

9 Q Were you involved in the production of these
10 matrixes?

11 A No.

12 Q Who produced the matrixes?

13 A That was done locally in Muncie.

14 Q I'm going to hand you a document that's been
15 marked as Exhibit 25. It's a March 23, 1998,
16 memorandum from Mr. Nuerge to yourself with the 1998
17 changes to the group insurance program and pensions.

18 Have you ever seen this document before?

19 A I've seen this before.

20 Q And you are a participant in the 1998
21 contract negotiations, is that correct?

22 A I was.

23 Q And is it your recollection that with respect
24 to health care benefits that there were some
25 modifications for retiree health care benefits that

1 were improvements and that they're set forth on
2 Page 3?

3 MR. BURCHFIELD: Object to form.

4 A Please clarify for me what you're
5 specifically referring to on Page 3.

6 BY MR. RADTKE:

7 Q It says for active employees, retirees, and
8 eligible survivors, and it says modifications to
9 improve the prescription plan. And then underneath
10 that it says mental health and substance abuse for
11 hourly actives, retirees, and eligible survivors,
12 which increase the number of visits that the plan
13 provided for.

14 A I see that, yes.

15 Q Do you recall -- I'll withdraw that question.

16 If you look at DTP 22002, I guess it's the
17 last page of this document. I'm sorry. I got the
18 wrong one I'm referring to. I'm referring to a
19 different copy. I apologize.

20 I'm going to show you what's been marked as
21 Exhibit 27.

22 Have you ever seen this document before?

23 A I have seen this document before.

24 Q Okay. Do you know who put this document
25 together?

1 A The local Muncie management team.

2 Q Do you remember if the front cover of this
3 was an orange document, had an orange cover?

4 A I do not.

5 Q If you'll turn to the second page, there is a
6 disclaimer notice.

7 Do you know who drafted the disclaimer
8 notice?

9 A I do not.

10 Q Have you ever seen that before today?

11 A I don't recall.

12 Q Do you recall whether the words in this
13 disclaimer notice were negotiated across the table in
14 1998 while you were present in negotiation?

15 A No, I don't.

16 Q In this disclaimer notice in the second
17 paragraph it says, The company and the union may
18 through the process of negotiations modify, amend,
19 suspend, or terminate these plans in whole or in
20 part.

21 Is that your understanding of how the plans
22 could be modified, amended, suspended, or terminated?

23 MR. BURCHFIELD: Object to form and foundation.

24 A I think that's one way of doing it.

25

1 BY MR. RADTKE:

2 Q What's another one?

3 A I'm not sure and I don't want to speculate.

4 Q Okay. Do you know whether the company
5 distributed this document to anyone?

6 A I don't recall specifically that they did or
7 did not.

8 Q If you look at Page 13 -- it begins on
9 Page 13 and it continues through Page 15, the Hourly
10 Retiree Health Insurance Outline for 1998 Insurance
11 Review.

12 A I see the heading.

13 Q And then you will see that there is, again --
14 it's set forth on Page 14 and 15 -- that there were
15 different deductibles, stop loss and prescription
16 plan deductibles for retirees that were based on the
17 date of retirement, correct?

18 A Yes.

19 Q So even if you retired under the 1989 health
20 insurance agreement as of 1998, your stop loss, your
21 prescription drug deductible, and your deductible
22 remain the same, correct?

23 A That's what this document states.

24 MR. BURCHFIELD: Could you read that question
25 again?

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1 (From the record above, the reporter read
2 the following:

3 "Q So even if you retired under the
4 1989 health insurance agreement as of
5 1998, your stop loss, your prescription
6 drug deductible, and your deductible
7 remain the same, correct?")

8 MR. BURCHFIELD: Thank you.

9 (Exhibit 61 marked as requested.)

10 BY MR. RADTKE:

11 Q You've been handed a document that's been
12 marked as Exhibit 61, and it's an e-mail from
13 Mr. Nuerge, it looks like, to yourself, among others,
14 regarding the draft of the 1998 hourly insurance
15 highlights.

16 Have you ever seen this document before?

17 A I don't recall seeing this.

18 Q Okay. Do you think it's referring to the
19 document that's been marked as Exhibit 27, which is
20 also called Insurance Highlights?

21 A I don't know.

22 Q Do you know what document it's referring to
23 in the first line where it says, George, we
24 understand from your comments and from Peggy
25 Muensterman's comments that we cannot call this a

1 true SPD even with the changes we made per your
2 suggestions?

3 A I cannot.

4 (Exhibit 62 marked as requested.)

5 BY MR. RADTKE:

6 Q Exhibit 62 is a November 10, 2000, fax to
7 yourself from Mr. Nuerge with excerpts of an old
8 insurance booklet.

9 Do you recall receiving this?

10 MR. BURCHFIELD: Object to form.

11 A I don't know.

12 BY MR. RADTKE:

13 Q You don't know why Mr. Nuerge faxed those
14 items to you?

15 A (Nodding.)

16 THE COURT REPORTER: Is that a no?

17 THE WITNESS: That's a no.

18 BY MR. RADTKE:

19 Q Mr. Turczynowsky, you've been handed a
20 document that's been marked as Exhibit 29.

21 Have you ever seen this document before?

22 A This document looks familiar.

23 Q You were involved in the 2000 negotiations
24 with the union, yes?

25 A Yes, on a limited basis.

1 Q And there was an agreement that was reached
2 in 2000 with the union?

3 A Yes.

4 Q On the first page it has a section that
5 relates to health insurance, and in the last line of
6 that section it says, increase deductible/stop losses
7 five percent per year beginning in 2003.

8 Do you know what that is referring to?

9 A One of the earlier documents we looked at
10 talked about providing for a five percent increase
11 through 2002. This, I believe, was intended to
12 continue that beyond 2002. In other words, this
13 became a rollover of that five percent; therefore,
14 beginning in 2003, if we noted it was the ten year,
15 that this would have picked up where the other one
16 left off.

17 Q Was that increase of five percent with
18 respect to the deductibles and stop losses applicable
19 to people who retired before January -- I'm sorry --
20 November 28, 2000, and who were on the PPO program?

21 MR. BURCHFIELD: Object to form. Do you
22 understand the question?

23 A Let's do that again, please.

24 MR. RADTKE: Could you read that one more time?

25 (From the record above, the reporter read

1 the following:

2 "Q Was that increase of five
3 percent with respect to the deductibles
4 and stop losses applicable to people who
5 retired before January -- I'm sorry --
6 November 28, 2000, and who were on the PPO
7 program?")

8 THE WITNESS: I think so.

9 BY MR. RADTKE:

10 Q In 2000, it's true that the parties reached
11 an agreement that went from 2000 to 2005, is that
12 true?

13 A That's my recollection.

14 Q I'm sorry. It went to 2006. Do you remember
15 whether the 2000 agreement lasted until 2006?

16 A I do not.

17 Q Okay. On this front page it also talks
18 about, under prescription drugs, adding a third tier
19 with a 25 dollar co-pay.

20 A I see that.

21 Q Do you know whether that third tier was
22 applicable to retirees?

23 A I do not.

24 (Exhibit 63 marked as requested.)

25

1 BY MR. RADTKE:

2 Q Mr. Turczynowsky, you were handed a document
3 that's been marked Exhibit 63. It's titled Excerpts
4 from the Agreement on Insurances and Pensions,
5 11/28/2000.

6 Have you ever seen that document before?

7 A I don't recall seeing this document.

8 Q If you look on the second page, there is a
9 chart that has the increases and deductibles and stop
10 losses from 2000 to 2005.

11 Have you ever seen that chart before?

12 A I don't recall.

13 Q That's in line with what was agreed to in
14 2000 with respect to the five percent increases for
15 deductibles and stop losses?

16 MR. BURCHFIELD: Object to form and foundation.

17 A I'm not certain.

18 (Exhibit 64 marked as requested.)

19 BY MR. RADTKE:

20 Q You've been handed a document that's been
21 marked Exhibit 64. It's March 19, 2001, notes,
22 discussion with George Turczynowsky, R.A. Nuerge.
23 They're handwritten, and they're signed by
24 Mr. Nuerge.

25 Have you ever seen these notes before?

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1 A No.

2 Q Did you ever -- do you remember having a
3 discussion with Mr. Nuerge about the subjects that
4 are set forth in this document?

5 A I remember the first one.

6 Q Okay. What about the fifth one?

7 A I don't recall that.

8 Q Do you know what that is referencing?

9 A I can't be certain.

10 Q You're not as disappointed now?

11 A Not nearly.

12 Q You've been handed a document that's been
13 marked Exhibit 35.

14 MR. BURCHFIELD: What is that?

15 MR. RADTKE: 35.

16 MR. BURCHFIELD: Did you give me one of those?
17 35?

18 MR. RADTKE: Yes.

19 BY MR. RADTKE:

20 Q Does that refresh your recollection that
21 there was some kind of a controversy about whether
22 the third tier or the prescription drugs deductible
23 was applicable to retirees?

24 A I have a vague recollection on this.

25 Q What do you recall?

1 A I remember the issue now that I've seen this
2 letter.

3 Q And what was the issue?

4 A Well, according to the letter, that something
5 was sent out in error to certain participants and
6 that that would be rectified with follow-up details
7 and to remedy the situation.

8 Q And do you remember that to be that the third
9 tier was applied to retirees?

10 A In reading this letter, I do not recall that.
11 (Exhibit 65 marked as requested.)

12 BY MR. RADTKE:

13 Q You've been handed what's been marked as
14 Exhibit 65. It's a document called BorgWarner, Inc.,
15 Base Plan/Major Medical Benefits for Muncie Hourly
16 Retirees, December 1989; Effective Date, January 1,
17 2004.

18 Have you ever seen this document before?

19 A This was part of CIGNA's boilerplate version
20 of their SPDs. They wanted to get something out to
21 the various and sundry employees and retirees. I
22 notice the date is January 1, 2004, so -- I do recall
23 seeing this boilerplate type document.

24 Q The part -- the UAW and BorgWarner did not
25 have contract negotiations in 2004, correct?

1 A Not to my knowledge.

2 Q So this was sent out by CIGNA without
3 negotiations with the UAW?

4 A That's correct. It was a boilerplate
5 document. They wanted to describe what they thought
6 was their understanding of the benefits that were
7 enforced based on the retirees -- hourly retirees in
8 December of 1989.

9 Q Do you know whether this document accurately
10 reflects the benefits for the retirees?

11 MR. BURCHFIELD: Object to form and foundation.

12 A You know, in looking at this without looking
13 at additional details and facts, I can't stipulate
14 that it does.

15 (Exhibit 66 marked as requested.)

16 BY MR. RADTKE:

17 Q Mr. Turczynowsky, you were handed a document
18 that's been marked as Exhibit 66. It's dated
19 December 18, 1995. It's a letter from yourself to a
20 Mr. Dandelske who worked for CIGNA Health Care at the
21 time. And there is an attachment to that letter.

22 Have you ever seen this document?

23 A Yes.

24 Q And what is this document?

25 A It reflects the level of benefits for the

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1 various categories of employees -- active employees
2 and retirees via the Muncie facility.

3 Q And why did you send this to CIGNA Health?

4 A As I said before, this was done on an annual
5 basis to let them know precisely what changes would
6 take place on January 1st of every year so that these
7 could be incorporated into their administrative and
8 claim adjudication systems.

9 (Exhibit 67 marked as requested.)

10 BY MR. RADTKE:

11 Q You've been handed a document that's marked
12 as Exhibit 67. It's a December 16, 1996, letter from
13 yourself to Mr. Dandelske with an attachment.

14 Have you seen this document before?

15 A Yes.

16 Q This is another document that was sent to
17 CIGNA so that they could make the appropriate changes
18 to the health care benefits for retirees?

19 A For all employees effective 1/1/97.

20 Q For all employees and hourly retirees?

21 A For all active hourly and retired employees.

22 Q And these changes were based on what was
23 negotiated with the union?

24 A That's correct.

25 Q If you were to look at both -- and you're

1 doing it already. If you were to look at Exhibit 66
2 and Exhibit 67 together and if you were to look at
3 the last two pages of Exhibit 67 and then the two
4 pages of Exhibit 66, these are the matrixes that you
5 described previously?

6 A Yes.

7 Q And you've been shown other versions of these
8 matrixes?

9 A Yes.

10 Q If you look at these documents and you look
11 at only the insurance features as they relate to
12 retirees -- I'm not going to include actives, okay?

13 A Uh-huh, yes.

14 Q Is it accurate that the only difference
15 between these two plans or these two insurance
16 feature documents is that for the Medicare BRO 72,
17 the pre-Medicare 067, and the Medicare/pre-Medicare
18 live out-of-area their stop loss and deductibles have
19 changed, in comparing the two?

20 MR. BURCHFIELD: Object to the form and to the
21 foundation. While he's looking at that, I note the
22 possibility of human error in making this sort of
23 comparison on this file like this.

24 MR. RADTKE: Sure.

25 A Now that I've had a chance to look at this,

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1 would you please restate the question, repeat the
2 question?

3 BY MR. RADTKE:

4 Q The differences between the Muncie health
5 insurance plans, insurance features effective
6 January 1, 1996, and January 1, 1997, are found in
7 Medicare BR 072, pre-Medicare BR 067, and
8 Medicare/pre-Medicare live out-of-area as it relates
9 to stop loss and deductible?

10 MR. BURCHFIELD: Are you asking about both pages?

11 MR. RADTKE: All three of them. Those three are
12 all on the second page, those three categories.

13 MR. BURCHFIELD: So you're excluding the first
14 page from the question?

15 MR. RADTKE: I'm not excluding the first page.
16 Those are the places where I -- the only place I can
17 see where there are differences between the two
18 documents.

19 MR. BURCHFIELD: Okay. If you're not excluding
20 the first page, then you should look at --

21 MR. RADTKE: I don't mean to exclude the first
22 page.

23 A Then I agree. I see that.

24 (Exhibit 68 marked as requested.)

25

1 BY MR. RADTKE:

2 Q Mr. Turczynowsky, you've been a handed a
3 document that's been marked as Exhibit 68. It's a
4 November 17, 1997, letter again from yourself to
5 Mr. Dandelske with documents attached, including a
6 matrix that is similar to the other documents that I
7 showed you.

8 Is this the same type of document?

9 A Yes.

10 (Exhibit 69 marked as requested.)

11 BY MR. RADTKE:

12 Q You've been handed a document that's been
13 marked as Exhibit 69. It's a November 13, 1998,
14 document, a letter from you to Mr. Dandelske with
15 another matrix.

16 A Yes.

17 Q Same thing --

18 A Yes.

19 Q -- as the previous exhibits, correct?

20 A Yes.

21 (Exhibit 70 marked as requested.)

22 BY MR. RADTKE:

23 Q Mr. Turczynowsky, you've been handed a
24 document that's dated December 9, 1999. It's another
25 letter from you with a matrix attached.

1 A Actually, it's a letter from one of my
2 colleagues, but yes, I see it.

3 Q It's the same type of information provided to
4 CIGNA?

5 A Yes.

6 (Exhibit 71 marked as requested.)

7 BY MR. RADTKE:

8 Q You've been handed a document that's been
9 marked Exhibit 71. It's a November 7, 2000, letter
10 from yourself to Mr. Arquette now at CIGNA Health
11 with matrixes attached, correct, as well as other
12 items?

13 A Yes.

14 Q That was sent for the same purpose as the
15 previous one?

16 A Yes.

17 (Exhibit 72 marked as requested.)

18 BY MR. RADTKE:

19 Q Mr. Turczynowsky, you've been handed a
20 document dated November 27, 2001. It's been marked
21 as Exhibit 72. It's a letter from yourself to
22 Mr. Arquette at CIGNA.

23 There is a number of pages that are
24 attached, including the last two pages are the
25 matrixes, correct?

1 A Yes.

2 Q If you look at the last page of this
3 document --

4 A The matrix?

5 Q Yes. DTP 12336.

6 A Yes.

7 Q You will notice that this is the Muncie
8 hourly health plan effective January 1, 2002, and
9 that according to the prescription drug insurance
10 features, that group of retirees has a two-tier
11 prescription drug co-pay, is that accurate?

12 A We're talking about Branch 071 and
13 Branch 072?

14 Q No. I'm actually talking about Branch 067 --
15 well, 067.

16 A On the first page?

17 Q No. Pre-Medicare Branch 067.

18 A I'm sorry. I found it. I see it.

19 Q So for those retirees who retired after
20 January 1993, according to this matrix, they had a
21 two-tier prescription drug co-pay, correct?

22 A Yes.

23 (Exhibit 73 marked as requested.)

24 BY MR. RADTKE:

25 Q Mr. Turczynowsky, you've been handed a

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1 document that's dated November 6, 2002. It's a
2 letter from yourself to Mr. Arquette at CIGNA Health
3 Care, and it attaches a matrix, correct?

4 A Yes.

5 Q And this document has been marked as Exhibit
6 73. This document was sent to CIGNA for the same
7 purpose as the other similar matrixes that I've been
8 handing you?

9 A Yes.

10 (Exhibit 74 marked as requested.)

11 BY MR. RADTKE:

12 Q Mr. Turczynowsky, you've been handed a
13 document that's been marked as Exhibit 74. It's an
14 October 2, 2003, letter from yourself to Mr. Arquette
15 at CIGNA. Attached are matrixes for the 2004 hourly
16 pension -- health care plans, correct?

17 A Yes.

18 Q This document was sent to CIGNA for the same
19 reasons as the previous matrixes, correct?

20 A Yes.

21 (Exhibit 75 marked as requested.)

22 BY MR. RADTKE:

23 Q Mr. Turczynowsky, you've been handed a
24 document which is an e-mail with attachments from
25 yourself to Mr. Arquette and matrixes attached to the

1 e-mail, correct?

2 A I see documents here -- matrices here
3 effective 1/1/2005 and 1/1/2004.

4 Q And 1/1/2002 as well. This is the documents
5 that were together in the way that I received them.
6 It may relate to -- that other spreadsheets were
7 provided to Mr. Arquette because there was some sort
8 of -- because of Ms. Bowles' reference in the e-mail.

9 Do you recall sending this to Mr. Arquette?

10 A I certainly agree that I sent him the grids
11 effective 1/1/05, but whether I ever attached the
12 other ones for whatever reason, that's not clear to
13 me and I don't recall that.

14 Q But with respect to the 1/1/05 changes, those
15 were sent to Mr. Arquette for the same reason as the
16 previous ones that were mailed to him, correct?

17 A Yes.

18 Q Now I'm going to ask you to take a look at
19 Exhibit 75 that I just handed you and Exhibit 66,
20 which is the one that's dated December 18, 1995.

21 A Exhibit 66 and Exhibit 75.

22 Q Correct. In Exhibit 66, pre-Medicare before
23 December 1, 1989, were designated as BR 65, which you
24 stated previously meant Branch 65?

25 A That's correct.

1 Q On Exhibit 75, that matrix, it has
2 pre-Medicare, retired before October 1, 1986, retired
3 before December 1, 1989, and that is called MPP02.

4 Do you know why the numbers changed or the
5 designations changed?

6 A Pre-Medicare MPP02, retired before 10/1/86
7 and retired before 12/1/89, why that number changed,
8 why that's different than Branch 65?

9 Q Right.

10 A It was a CIGNA system protocol change. They
11 changed their own internal designations from the
12 Branch 65s under their old systems, and I don't
13 recall what that was, what it was called, but they
14 did change to a new adjudication system, and
15 therefore the designation protocol changed.
16 Everything else -- everything else should have been
17 the same in those two columns.

18 Q So it was just an insurance company change?

19 A An insurance company change.

20 Q And in no way related to the benefits that
21 were provided?

22 A None whatsoever.

23 Q And if you look at both of them, you're going
24 to see that other BRs became MPP03s and other letters
25 like MIND1 and MPP04, et cetera.

1 A Yes.

2 Q Those are all as a result of CIGNA changing
3 its designation?

4 A Yes.

5 Q But that designation change did not affect
6 the benefit changing?

7 A That's correct.

8 Q Or did not affect the benefits?

9 A Levels or the operation of the plan.

10 Q So at the time you retired in 2005 the
11 benefits that were provided to hourly retirees before
12 1989 stayed the same?

13 A That's correct.

14 Q Also for those retirees who retired after
15 1993 and were in the PPO plan, correct, with the
16 exception of the negotiated changes in stop loss,
17 deductible, and prescription drug deductible?

18 A Correct.

19 Q And by 2005 there had been an '89 HIA, health
20 insurance agreement, that expired in '92, correct?

21 A Yes.

22 Q A '92 health insurance agreement that expired
23 in '95, correct?

24 A Yes.

25 Q A '95 health insurance agreement that expired

1 in '98?

2 A Yes.

3 Q A '98 health insurance agreement that expired
4 in 2000?

5 A Yes.

6 Q And a 2000 agreement that was still in place
7 at the time of your retirement?

8 A I'm not sure about the 2001.

9 Q You're not sure whether that had expired at
10 the time of --

11 A Yes. I know there was an early opener and --
12 so I don't know what, if anything, had been resolved
13 prior to July of 2005.

14 Q Were you involved in -- that brings me to the
15 next question. Were you involved in contract
16 negotiations in 2005?

17 A No.

18 Q Did you have any role away from the table, at
19 the table?

20 A I had a role away from the table.

21 Q What was your role away from the table?

22 A Again, to provide guidance and financial
23 analysis and consultation and direction for the local
24 management people in developing a strategy for the
25 2005 negotiations.

1 Q Did you ever review the agreement that was
2 reached by the union and the company in 2005?

3 A No.

4 Q You don't know what was negotiated with
5 respect to health care benefits for that group?

6 A No. We were in transition.

7 Q You were leaving the company?

8 A Yes.

9 Q Who took your spot?

10 A You know, I don't recall. Rather than
11 speculate, I'm just going to -- I don't recall
12 because there were several different people involved.

13 MR. RADTKE: Okay. If you guys would give me
14 about five minutes, I would just quickly go through
15 my documents and see if there is any further
16 questions I have.

17 MR. BURCHFIELD: Sure.

18 MR. RADTKE: Thank you.

19 (Recess was taken.)

20 BY MR. RADTKE:

21 Q Mr. Turczynowsky, do you know why the company
22 never changed retiree health care benefits for hourly
23 retirees until after you left the company?

24 MR. BURCHFIELD: Object to the form and
25 foundation.

GEORGE TURCZYNOWSKI
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1 A Which retirees are we talking about
2 specifically?

3 BY MR. RADTKE:

4 Q Hourly retirees who retired between 1989 and
5 2005 when you left the company.

6 MR. BURCHFIELD: Same objections.

7 A I would be speculating.

8 BY MR. RADTKE:

9 Q You don't know?

10 A No.

11 Q Were you aware that BorgWarner made changes
12 to retiree health care benefits for hourly retirees
13 in 2006?

14 A I was aware of some changes made in 2006.

15 Q Were you consulted by the company prior to
16 those changes being made?

17 A No.

18 Q Were you consulted afterwards?

19 A Not by the company.

20 Q Were you consulted by anyone?

21 A There was an issue that came up with regard
22 to certain employees and a matter handled in the
23 courts in Indianapolis, and I was asked to respond to
24 certain issues that I may be aware of, and I was not
25 able to attend for personal reasons.

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1 Q Are you talking about a trial that occurred
2 involving the UAW and BorgWarner?

3 A Yes.

4 Q You performed some work related to that
5 lawsuit?

6 A No, no work.

7 Q You were asked to attend the trial but you
8 were unable to do so?

9 A But I was unable to do so.

10 Q Were you aware that in 2009 the company made
11 changes to retiree health care benefits for hourly
12 retirees and surviving spouses?

13 A I saw perhaps inadvertently a document that
14 was presented by counsel yesterday where I happened
15 to notice something about a 2009 change, but I was
16 not -- I didn't get into details and we didn't get
17 into that because that was past my time with the
18 company.

19 Q You just learned of it yesterday?

20 A Yes, yes, indeed, indeed.

21 MR. RADTKE: I don't have anything further.

22 MR. BURCHFIELD: Okay. I have no questions. The
23 witness would like to read and sign the transcript.

24 (Whereupon the deposition concluded
25 at 3:24 p.m. on November 16, 2011.)

GEORGE TURCZYNOWSKI
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1 STATE OF ILLINOIS)
) ss:

2 COUNTY OF C O O K)
3

4 The within and foregoing deposition of the
5 aforementioned witness was taken before DONNA L.
6 POLICICCHIO, C.S.R., and Notary Public, at the place,
7 date, and time aforementioned.

8 There were present during the taking of the
9 deposition the previously named counsel.

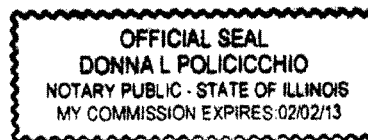
10 The said witness was first duly sworn and was then
11 examined upon oral interrogatories; the questions and
12 answers were taken down in shorthand by the undersigned,
13 acting as stenographer and Notary Public; and the within
14 and foregoing is a true, accurate, and complete record of
15 all of the questions asked of and answers made by the
16 aforementioned witness, at the time and place hereinabove
17 referred to.

18 The signature of the witness was not waived, and
19 the deposition was submitted, pursuant to
20 Rules 30(e) and 32(d) of the Rules of Civil Procedure for
21 the United States District Court, to the deponent per
22 copy of the attached letter.

23 The undersigned is not interested in the within
24 case, nor of kin or counsel to any of the parties.

25

1 Witness my official signature and seal as Notary
2 Public in and for Cook County, Illinois, on this
3 _____ day of _____, A.D. _____.



7
8 Donna L. Policicchio

DONNA L. POLICICCHIO, C.S.R.

9 License No. 084-003740

Notary Public

10 311 South Wacker Drive

Suite 300

11 Chicago, Illinois 60606

Phone: (312) 386-2000

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1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

2

3

4 WILLIAM L. SLOAN, EUGENE J.)

WINNINGHAM, JAMES L. KELLEY,)

5 on behalf of themselves and a)

similarly situated class,)

6)

Plaintiffs,)

7)

-vs-) No. 09-cv-10918

8)

BORGWARNER, INC., BORGWARNER)

9 FLEXIBLE BENEFITS PLANS, and)

BORGWARNER DIVERSIFIED)

10 TRANSMISSION PRODUCTS, INC.,)

)

11 Defendants.)

12

13 I, GEORGE TURCZYNOWSKY, being first duly sworn, on
14 oath say that I am the deponent in the aforesaid
15 deposition taken on November 16, 2011; that I have read
16 the foregoing transcript of my deposition, consisting of
17 Pages 1 through 128, inclusive, and affix my signature to
18 same.

19

20

GEORGE TURCZYNOWSKY

21

22 Subscribed and sworn to
before me this _____ day
23 of _____, _____.
24

25 _____
Notary Public

GEORGE TURCZYNOWSKI
November 16, 2011

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CASE: Sloan v. BorgWarner

DATE TAKEN: 11/16/11

DEPONENT: George Turczynowsky

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Reporter: Donna L. Policicchio